112 229

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883 4

No. ~~377~~ 65

EDWARD C. HANCOCK, APPELLANT,

vs.

MRS. ELIZA JANE HOLBROOK, NOW MRS. ELIZA JANE NICHOLSON, GEORGE NICHOLSON, AND CHARLES T. HOWARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 10, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 377.

EDWARD C. HANCOCK, APPELLANT,

vs.

MRS. ELIZA JANE HOLBROOK, NOW MRS. ELIZA JANE NICHOLSON, GEORGE NICHOLSON, AND CHARLES T. HOWARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from district court, parish of Orleans	1	1
Petition	1	1
Act of incorporation of the N. O. Picayune Printing Co.	31	11
Citation to Howard	37	13
Mrs. Holbrook	38	14
R. W. Holbrook	39	14
George Nicholson	40	15
Rule *nisi*	41	15
Note of evidence, filed Dec. 4, 1876	44	16
Dec. 6, 1876	46	16
Exception of Mrs. Holbrook	48	18
Note of evidence, filed Dec. 8, 1876	48	18
Answer of Chas. T. Howard	49	19
Petition of Nicholson for removal of cause to C. C. U. S.	53	20
Bond for removal	55	21
Clerk's certificate	57	21
Order fixing exceptions for hearing	59	22
on exceptions	59	22
Additional transcript from State court	60	22
Amended and supplemental petition	60	22
Citation	61	23
Order overruling exception	63	23
Answer of Mrs. E. J. Holbrook	63	23
Geo. Nicholson	92	33

	Original.	Print.
Entry in order book—answers filed	95	34
Agreement of counsel	96	34
Supplemental bill	97	35
Entry in order book—supplemental bill filed, &c.	101	36
Subpœna	101	37
Demurrer of Mrs. Holbrook and Geo. Nicholson	103	37
Order—demurrer fixed for hearing	105	38
Entry in order book—demurrer filed	106	38
Order—objections of defendant fixed for hearing	106	38
demurrer overruled	107	39
objections to stand over	107	39
Answer of R. W. Holbrook and R. Fitzgerald	108	39
Mrs. Holbrook and George Nicholson to supplemental bill	110	40
Entry in order book—answer filed	113	41
Agreement	114	42
Replication	114	42
Entry in order book—replication filed	116	42
Order appointing F. A. Woolley examiner	117	43
Agreement extending time to take testimony	117	43
for commission	119	44
extending time, &c.	119	44
Return to commission	120	44
Interrogatories	120	44
Cross-interrogatories	125	46
Commission	135	49
Deposition of E. C. Hancock	137	50
Examiner's certificate	180	63
Agreement extending time to take testimony	182	64
Motion and affidavit for subpœna *duces tecum* to Joseph Hernandez	183	64
Subpœna to Joseph Hernandez	185	65
Motion and affidavit for subpœna *duces tecum* to Geo. Nicholson	188	66
Subpœna to Geo. Nicholson	190	66
Agreement extending time to take testimony	191	67
Order extending time to take testimony	192	67
Motion and order extending time to take testimony	193	68
" " " " "	194	68
" " for publication of testimony, &c.	195	69
Testimony for complainant	195	69
of Alexander Walker	196	69
Document marked N, No. 1—Certificate of stock	239	83
2—Copy of judgment sixth district court, Meyer *et al. vs.* N. O. Herald and Printing Co.	239	83
3—Affidavit of Peter St. Amand	241	84
4—Letter, Walker to Warmoth, 29 Ap'l, '74	252	88
5— " " " Ap'l 10, '74	253	88
6—Certificate of stock	254	88
7— " "	254	88
8—Petition—Walker *vs.* Warmoth and Holbrook	255	89
9—Testimony of Hancock in case of Weed *vs.* Herald Printing Co.	272	94
Testimony of Jos. L. Herwig	279	96
Page M. Baker	281	97

	Original.	Print.
Testimony of Jos. Hernandez	283	97
Richard Weightman	286	99
M. F. Bigney	290	100
C. E. Whitney	298	103
Alexander Walker	302	104
Jos. Hernandez (recalled)	306	106
R. W. Holbrook	310	107
Alex. Walker (recalled)	311	107
Peter St. Amand	318	109
Richard Weightman (recalled)	321	110
Exhibit H, No. 1—Minutes of meeting of board of directors N. O. Picayune Printing Co., Jan'y 27, 1874, &c.	322	111
2—Supplemental petition in case of Weed *vs.* Herald Printing Co.	331	114
2 *bis*—Answers of Holbrook to interrogatories in case of Weed *vs.* Herald Printing Co.	341	117
3—Deed—N. O. Picayune Printing Co. to Hernandez, and minutes, &c.	361	123
4—Probate proceedings in matter of estate of A. M. Holbrook	368	125
5—Deed—Hernandez to A. M. Holbrook	372	126
Testimony of Charles T. Howard	377	128
Alex. Walker (recalled)	387	132
John H. Conniff	393	133
H. C. Dibble	395	134
Exhibit H, No. 6—Letter—Mrs. A. M. Holbrook to Richard Weightman (see *p.* 384)	398	135
7—Notice to counsel for defendants to produce certain evidence	398	135
8—Probate proceedings in matter of estate of A. M. Holbrook	400	136
9—Supplemental petition of Weed in case of Weed *vs.* Herald Printing Co.	406	139
10—Execution and sheriff's return, case of Montague and Lewis, executors, &c., *vs.* Herald Printing Co.	419	143
11—Deed—Hernandez to A. M. Holbrook	428	147
12—Act of pledge—Holbrook to Hernandez	430	148
13—Act of pledge—Holbrook to Warmoth	437	150
14—Order of subrogation in case of Houlihan *vs.* Herald Printing Co.	442	152
15—Letter—Dibble to Howard, March 13, 1880	443	153
Testimony for defendants	445	153
Testimony of Peter St. Amand	445	154
George Nicholson	448	155
Peter St. Amand (recalled)	461	160
Joseph Hernandez	485	169
H. C. Warmoth	487	170
Answer of Hernandez in case of Walker *vs.* Warmoth *et al.*, marked N, No. 10	517	180
Testimony of Charles T. Howard	622	182
Jos. Hernandez (recalled)	526	183

	Original.	Print.
Testimony of Geo. Nicholson (recalled)	533	186
Affidavit of Howard in case of Barnes *vs.* N. O. Picayune Printing Co., marked N, No. 11	539	188
Hearing and continuance of cause	541	189
submission of cause	545	191
Agreement to file documents	549	191
Document marked H, No. 16—Act of sale—Holbrook to N. O. Printing and Publishing Co.	548	192
17—Marriage contract between Geo. Nicholson and Mrs. E. J. Holbrook	550	194
18—Answer of Hancock in case of Barnes *vs.* N. O. Picayune Printing Co. *et al.* (missing)	558	195
19—Subpœna to Hancock in case of Barnes *vs.* N. O. Picayune Printing Co.	559	196
20—Affidavit of Dibble as to loss of record in case of Hancock *vs.* Holbrook, &c.	560	196
21—Stock-book of The N. O. Picayune Printing Co.	561	197
Document marked N, No. 13—Notice of seizure, &c., in case of Wilkes and Hall *vs.* Walker	569	201
14—Notice of seizure in case of Houlihan *vs.* Herald Company	582	206
15—Judgment against Herald Co. in case of Weed *vs.* Herald Co.	583	207
16—Judgment against Warmoth in case of Weed *vs.* Herald Co.	584	207
Final decree	585	207
Motion and order for appeal	585	208
Appeal bond	587	208
Clerk's certificate	590	209
Citation	591	210
Proof of service	592	210

a United States of America, Circuit Court of the United States, Fifth Circuit, and Eastern District of Louisiana.

EDWARD C. HANCOCK
versus
Mrs. ELIZA JANE HOLBROOK *et al.* } No. 8320.

Henry C. Dibble, Esq., and R. King Cutler, Esq., for complainant; Thomas J. Semmes and Robert Mott, Esq'r's, for defendants.

Transcript of appeal returnable to the Supreme Court of the United States, at the city of Washington, D. C., the second Monday of October, A. D. 1881.

1 United States of America, Circuit Court of the United States, Fifth Circuit, and Eastern District of Louisiana.

EDWARD C. HANCOCK
versus
Mrs. ELIZA J. HOLBROOK *et al.* } No. 8320.

Transcript. Filed December 13th, 1877.

STATE OF LOUISIANA, *Parish of Orleans:*

No. 23653. Third District Court.

Petition. Filed Nov. 25th, 1876.

To the honorable the judge of the superior district court, parish of Orleans:

The petition of Edw. C. Hancock, a resident of this city, and a citizen of Louisiana, respectfully represents:

1. That on the 19th day of December, 1873, there was created and organized in the city of New Orleans, under the statutes
2 thereunto providing, a private corporation, by an act before R. C. Mott, notary, which was styled and designated as the New Orleans Picayune Printing Company; that the objects and purposes of said company were declared to be, and were to print and publish a daily newspaper in the city of New Orleans, and to carry on a general printing establishment in connection therewith, all of which will appear from the duly certified copy of said charter hereunto annexed and made part of this petition.

2. Petitioner further shows that at the time there existed in the city of New Orleans a body corporate in law, styled the Herald Printing Company, which said company was then engaged in the publication of a newspaper in the city of New Orleans, which was known and styled as the "New Orleans Herald."

3. Petitioner further shows that prior to the 19th day of December, 1873, the said New Orleans Picayune Newspaper and
3 Printing Establishment, which had for many years previous existed in this city, was conducted and managed by a company styled the Picayune Printing and Publishing Company, which company, however, was then in an embarrassed and bankrupt condition.

4. Petitioner shows that prior to the 19th day of December, 1873, the said New Orleans Picayune Newspaper and Printing Establishment was sold at sheriff's sale, at the suit of John Phelps *vs.* The Picayune Printing and Publishing Company, No. — of the docket of the sixth district court for the parish of Orleans, on a credit of twelve months, to the Herald Printing Company aforesaid, which said Herald Company gave bond according to law for the sum of twenty thousand dollars, the purchase price, and that Joseph Hernandez, a resident of this city, became surety on said bond.

5. Petitioner shows that thereupon the Herald Printing Company entered into possesion of said New Orleans Picayune newspaper establishment, and proceeded to conduct and administer the same with success. While in the possession and ownership of said property, however, propositions were made to the officers and directors of said company by Henry C. Warmoth, a resident of this city, in behalf of Alva M. Holbrook, deceased, late of the city of New Orleans, and *in behalf of Alva M. Holbrook, deceased, late of the city of New Orleans, and* in behalf also of Joseph Hernandez, aforesaid, and of said Warmoth himself, who was liable in some manner to or for said Hernandez, on account of his (Hernandez) suretyship on said twelve months' bond. Petitioner shows that said propositions were to the effect that a sale or transfer of said Picayune establishment should be made by said Herald Company to said A. M. Holbrook in consideration of the assumption by him (the said Holbrook) of the payment of said twelve months' bond in lieu of said Herald Company, and of his deposit with said Hernandez of satisfactory security to be applied to such payment.

6. Petitioner further shows that it was further proposed by said Warmoth, in behalf of said Hernandez and of the said Holbrook and of himself (the said Warmoth), that, as part of the said proposed transaction, a new body corporate should be created, to be styled the Picayune Printing Company, to which new company the said Holbrook should transfer and deliver in full ownership the said New Orleans Picayune Printing and Newspaper Establishment, to be received by him, the said Holbrook, from said Herald Printing Company as proposed.

7. Petitioner now shows that the said propositions so made to the officers and directors of the Herald Company, as aforesaid, were accepted, and the New Orleans Picayune Printing Company was so constituted and formed, as hereinbefore set forth. Petitioner shows that it was provided in the act of charter that the capital stock of said new company should consist of one hundred and twenty shares of the nominal par value of two hundred and fifty dollars, all to be considered as full paid stock; and that the said Holbrook, in consideration of the assumption by him, as aforesaid, of the liability of said Herald Company, as principals on said twelve months' bond, and the deposit by him with the said Hernandez, as surety on said bond, of securities to his satisfaction for the payment of said bond, and the transfer by him (the said Holbrook) to said new company of said newspaper establish-

ment, should be the owner of sixty-five shares of said full paid stock, and that the stockholders of said Herald Company, as consideration of entering into such arrangements, in addition of being relieved and exonerated from the liability on account of said twelve months' bond, by assumption of the payment thereof by said A. M. Holbrook, were to receive the other fifty-five shares of said full paid stock, to be distributed among them (*i. e.*, among the stockholders of the Herald Printing Company) in certain proportions.

7 The amount of said fifty-five shares being considered as equivalent for the excess in value of said newspaper, established over said prices for which it had been purchased of the said Herald Printing Company at sheriff's sale, as aforesaid; and a recompense to the then stockholders of the Herald Printing Company, for the dissolution of said company and the consolidation of the New Orleans Herald printing establishment with the Picayune printing establishment, and the resulting enhancement of the value of said latter-named printing establishment. All of which said latter transactions will be duly shown on trial hereof by the production of a written agreement made and signed by Alexander Walker, acting for and with the authority of said Herald Company, as president thereof, and by said A. M. Holbrook and Joseph Hernandez, and said Henry C. Warmoth.

8. Petitioner now further shows that, by reason of the said transactions, the said New Orleans Picayune Printing Company became

8 and was in no way liable for or on account of said twelve months' bond which, as aforesaid, was given by said Herald Company for the price of adjudication to it at sheriff's sale of said newspaper establishment; that said bond in no sense ever became a debt of said New Orleans Picayune Printing Company, but remained the debt of the said Herald Company, and the personal debt, by his assumption thereof, as aforesaid, of the said A. M. Holbrook and of said Hernandez, as surety, and of said Warmoth to whatever extent or in whatever manner he was bound therefor, to, with, or for said Hernandez.

9. Petitioner further shows that, by the terms of said charter of the New Orleans Picayune Printing Company, petitioner, by reason of his having been a stockholder in the Herald Printing Company, aforesaid, became a stockholder in the said new company, and was recognized in the said charter as the holder and owner of fifteen

9 shares of the one hundred and twenty shares of the capital stock of said company.

10. Petitioner shows that he has since become the holder and owner of five additional shares of said capital stock, one of which said five shares originally stood in the name of Albert Shultz, one in the name of Wm. Mehle, one in the name of Christian Mehle, one in the name of Joseph Donaldson, and one in the name of D. B. Penn, all of which will be duly shown on the trial hereof.

11. Petitioner shows that the original par value of said capital stock of said company was fixed at two hundred and fifty dollars per share, as aforesaid, but that said shares are now worth, by

reason of the enhancement of the said property, fully twelve hundred dollars per share.

12. Petitioner further shows that the directors named in the charter of the said New Orleans Picayune Printing Company proceeded to administer the property and affairs of said company, and that A. M. Holbrook was chosen president of said company, and that the business of said company prospered, and large assets accumulated, and the revenues of the establishment were amply sufficient, if properly administered, to pay all its expenses, to meet all its debts justly due, and to return a dividend to its stockholders.

13. Petitioner shows that the number of directors so constituted was composed of the said late A. M. Holbrook, president of said company, of Peter St. Armand, Richard W. Holbrook, Alexander Walker, and petitioner. The said St. Armand and the said R. W. Holbrook, however, petitioner avers, were not *bona fide* stockholders in said company, and had no actual interest therein, they being only employees of the said A. M. Holbrook, who had placed a share of said stock in the name of each, and to the end only that he should be able to select them as directors upon said board through the preponderating influence of his ownership of the majority of the stock of said company, and with a view, as this petitioner avers and charges, of perpetrating a fraud and a wrong upon this petitioner and the other stockholders in the said company.

14. And petitioner now further shows that the said A. M. Holbrook, president of said company, confederating and combining with the said Peter St. Armand and the said R. W. Holbrook, proceeded to administer the said property, and its earnings, with the view to unlawfully and fraudulently and wrongfully converting the property of said corporation, including the entire property of the New Orleans Picayune Newspaper and Printing Establishment, to the satisfaction and payment of the personal indebtedness of said A. M. Holbrook, president of said company, and to thereafter transfer to him, and vest in him, the said A. M. Holbrook, in his private and individual capacity, the title and ownership of the said New Orleans Picayune Newspaper and Printing Establishment, in disregard of the rights of this petitioner, and of the other stockholders of the said company.

15. Petitioner further shows that, in furtherance and execution of said fraudulent scheme, the said A. M. Holbrook, president of said company, convened a meeting of said board of directors on the 4th of December, 1874, and then and there caused to be introduced, and passed the following resolution:

"Whereas the twelve months' bond for the original purchase of the New Orleans Picayune and Printing Establishment given to the sheriff, in the suit of John Phelps *vs.* The New Orleans Picayune Printing and Publishing Co., No. —, sixth district court, amounting to twenty thousand two hundred and eleven dollars and thirty-eight cents, is about to become due and payable; and

"Whereas A. M. Holbrook is unable to pay the same; and

"Whereas this company has not the means to satisfy said bond; therefore, be it

"*Resolved*, That in case Joseph Hernandez, the surety on said bond, shall pay the same, the president of the company be, and he is, authorized to sell and transfer the Picayune establishment
13 and all its property and good-will to the said Joseph Hernandez, in satisfaction of his claim as surety on his bond."

16. Petitioner shows that there were present at said meeting of said board of directors the said A. M. Holbrook, the said R. W. Holbrook, the said Peter St. Armand, and the said Alexander Walker, and this defendant was absent, and that said Alexander Walker protested against said resolution as illegal and a fraud upon the stockholders; that the bond was not due by said company, but by said Holbrook personally; and that the attempt to convey said property to said Hernandez was a fraud; and that said Alexander Walker caused his protest to be entered upon the minutes of the company, but that, nevertheless, the unlawful resolution was adopted by the votes of A. M. Holbrook, of his brother, the said R. W. Holbrook, and the said Peter St. Armand, who were completely under the control of said A. M. Holbrook.

17. Petitioner further shows that although he was one of the directors of the said New Orleans Picayune Printing Company,
14 as aforesaid, yet from the first organization of the said board of directors petitioner was to all intents and purposes excluded from any participation in the management of said concern by the said A. M. Holbrook combining with his two said confederates upon said board; and petitioner avers discerning, as he then believed, and as he now believes correctly, the fraudulent purposes of said A. M. Holbrook confederating with his two accomplices, as aforesaid, to consummate his illegal and fraudulent designs, petitioner protested, and continued to protest, and has at all times continued to protest, against said fraudulent transactions.

18. Petitioner now further shows that on the day following, on the 15th day of December, the said A. M. Holbrook announced himself in possession of the said newspaper establishment, as the agent of Joseph Hernandez, although at that time the twelve months' bond given by said Herald Printing Company, with said Hernandez as surety, had not become due, and although at that time the said New Orleans Picayune Printing Company had
15 in no way become liable for or on account of said bond, to satisfy which and to screen the said A. M. Holbrook from the payment thereof as his personal debt the entire property of the New Orleans Picayune and Printing Company was thus fraudulently converted and misapplied, as aforesaid.

19. Petitioner now still further shows that as a further step in the said fraudulent transaction, the said A. M. Holbrook, the president of said company, as aforesaid, on the 18th day of December, 1874, convened an illegal and pretended meeting of the stockholders of said company, at which meeting, by the vote of persons not entitled therein, it was declared that the Picayune Company

was dissolved, and that R. W. Holbrook, aforesaid, brother of said A. M. Holbrook, and George Nicholson, an accomplice of said A. M. Holbrook, were appointed as commissioners to liquidate its affairs, and that the said meeting was controlled and all its acts directed by said A. M. Holbrook, who had already transferred the whole property of the company fraudulently and illegally to
16 said Joseph Hernandez.

Petitioner denies that the said meeting of stockholders was in anywise binding upon him as a stockholder, or upon any stockholder in said company.

20. And now petitioner shows that immediately after said pretended dissolution [of] said corporation and the appointment of said so-called commissioners to liquidate its affairs, the said Joseph Hernandez transferred the said Picayune Newspaper Establishment to A. M. Holbrook for the stated consideration of twenty thousand two hundred and twenty dollars, to be paid in monthly instalments from the earnings of the establishment, which establishment and its earnings had never ceased to be the rightful property of said Picayune Printing Company and its stockholders, and that said A. M. Holbrook continued in possession of said establishment under claim of sole ownership, as above set forth, up to the time of his death, which occurred about ———, and that Mrs. Eliza Jane Holbrook, his widow, a resident of this city, soon after assumed to be in possession of said establishment, and
17 asserted title thereto as the universal legatee of the said A. M. Holbrook.

21. And petitioner further avers that he is informed that George Nicholson aforesaid now also claims to have some right, title, and interest in the said establishment, by virtue of some transaction or transfer between said Mrs. Eliza Jane Holbrook, widow, and him, the said George Nicholson, the manner of which transaction petitioner is not informed; but true it is that the said newspaper establishment, and all the property appertaining thereto, is in the possession of the said Mrs. Eliza Jane Holbrook and the said George Nicholson, although, as this petitioner avers, the said establishment has never ceased to be, and is now, the property of the stockholders of the New Orleans Picayune Printing Company.

22. Petitioner further avers that the said A. M. Holbrook originally came into the control and possession of said property in a judiciary capacity, and was entitled to hold the same only in
18 trust for the benefit and advantage of said corporation, of which he was president, and that the transfer of said property as hereinbefore set forth to said Hernandez, and from him to said A. M. Holbrook in his individual capacity, were made with full knowledge of said trust on the part of said Hernandez and said A. M. Holbrook, and with the full knowledge on the part of all of them; that the said newspaper establishment was the property of the corporate body known as the New Orleans Picayune Printing Company, and that said company was not liable on said twelve months' bond given by said Herald Company, and that said A. M. Holbrook was liable therefor, personally, by reason of his assump-

tion in the manner hereinbefore set forth, and that the directors of the said Picayune Printing Company could convey no title whatever to the property of said corporation to any one knowingly receiving it, in satisfaction of the debt for which said corporation was in no wise bound.

19 23. Petitioner now declares and avers that at the time of the said pretended meeting of the stockholders, at the time the pretended resolution to dissolve said corporation is pretended to have been adopted, said A. M. Holbrook was not a stockholder, with authority in law to appear and vote at a meeting of stockholders of the corporation, for this: that the said A. M. Holbrook, who who had assumed the payment of said twelve months' bond, in consideration of his receiving sixty-five shares of the capital stock of the said company, had defaulted on his said obligation, and thereby the said sixty-five shares of stock, so issued to him in consideration of his assumption of said bond, were forfeited to and reverted to the said company, and became the property of the stockholders thereof; but for this, petitioner avers and admits, that in equity and good conscience, and notwithstanding the fraudulent and illegal combinations and transactions of said A. M. Holbrook with Joseph Hernandez, and George Nicholson, and Peter St.

20 Armand, and R. W. Holbrook, nevertheless the said New Orleans Picayune Printing Company, and the holders and owners of the remaining fifty-one shares of the stock thereof, owed to the said Joseph Hernandez, or his legal assigns, the amount in money which the said Joseph Hernandez paid for the discharge of the twelve months' bond aforesaid, upon which said Hernandez was surety as aforesaid, but which was primarily the debt in equity and good conscience of the New Orleans Picayune Printing Company, as successor of the Herald Company, which corporation was legally the principal on said bond; but petitioner shows that from such amount so due from the stockholders aforesaid to Joseph Hernandez, or his assigns aforesaid, should be deducted any amount which may have been paid to the said Hernandez or his assigns, under the illegal and fraudulent pretended transfer, contracted between said Holbrook and said Hernandez, whereby the said Hernan-

21 dez assumed to transfer the said printing establishment to Holbrook in consideration of the sum *of the sum* of twenty thousand two hundred and twenty dollars.

24. Petitioner shows that four shares of the original one hundred and twenty shares of the capital stock of said company by the said McComb, and became the property of the remaining shareholders, as will be shown on trial.

25. Petitioner further avers that by reason of the surrender of the said four shares by the said McComb, and of the reversion to the company of the sixty-five shares issued to A. M. Holbrook as aforesaid, there now remains but fifty-one shares of the capital stock of the said company, of which said fifty-one shares of the capital stock of the said company petitioner is holder and owner of twenty shares as aforesaid.

26. Petitioner now further avers and shows that by reason of the

fraudulent machinations and transactions of the said A. M. Holbrook and his said confederates, hereinbefore set forth, the New Orleans Picayune Printing Company has been disorganized,
22 and there now remains no proper officer or corporate authority to assert its rights in a court of justice, or sue for, and recover its property, or to have care and custody thereof, the president and the majority of the board of directors alike having proved recreant to their trusts, and confederated and combined among themselves and with others, as hereinbefore set forth, to defraud the corporation and all of its stockholders other than themselves.

27. And petitioner shows that he has no adequate remedy at law to redress his wrongs and recover his rights except by instituting and maintaining this action in his own behalf as a stockholder of the said corporation.

28. Petitioner further shows that Chas. T. Howard, a resident of the city of New Orleans, is the sole assignee of all the rights and title in and to the New Orleans Picayune Printing Establishment of Joseph Hernandez, under and by virtue of the transaction hereinbefore set forth.

23 29. Petitioner further shows and avers that the New Orleans Picayune Newspaper and Printing Establishment, which was the sole property of the New Orleans Printing Company, never became the individual property of A. M. Holbrook, and could not pass into his possession, but that said property and all of its appurtenances at No. 66 Camp street, New Orleans, is now in the individual possession of said Eliza Jane Holbrook and said George Nicholson, under some pretended transfer from her, and that said Mrs. Holbrook claims to have become the owner of said property by testamentary bequest from said A. M. Holbrook, but that he could bequeath to her no better title than he had himself, and that he was without a shadow of title of any validity in law to warrant the withholding of said property from its rightful owners, the said corporation and its stockholders.

30. Petitioner still further shows that said A. M. Holbrook and the said George Nicholson, and the said R. W. Holbrook,
24 and the said Mrs. Eliza Jane Holbrook were without any power in law or equity to incumber the said property known as the New Orleans Picayune Newspaper and Printing Establishment, with any debt, liability, or obligation: and petitioner avers that said property is not now charged with any debt, liability, or obligation, and that the remaining fifty-one shareholders of the capital stock of the New Orleans Picayune are without any outstanding liabilities or obligations as stockholders in said company, except the obligation and good conscience to pay any balance that may be due to Charles T. Howard aforesaid, as the assign of Joseph Hernandez, as surety on said twelve months' bond as aforesaid.

31. Petitioner reserves his right to maintain an action for the recovery from Mrs. Eliza Jane Holbrook and George Nicholson, and from the succession of the late A. M. Holbrook the proportion

of mean profits and dividends which should have accrued to him *pro rata* as a stockholder in the New Orleans Picayune Printing Company, as hereinbefore set forth.

25 32. Petitioner further avers that he is informed that Charles T. Howard, as the assignee of Joseph Hernandez as aforesaid, claims to have some lien or privilege upon said newspaper establishment, and claims to be in possession and control of the same through an agent, who is situated in said building; but petitioner avers that the said Howard has no valid right, title, or claim to the said property, or to the possession or control thereof beyond the right to recover from the remaining shareholders any amount that may yet be due him as the assign of Joseph Hernandez for any balance unpaid of the amount paid the said Hernandez as surety upon said twelve months' bond as aforesaid.

33. Petitioner further avers that the premises considered, it appears to be necessary, and the law would seem to warrant and require that this hon. court should appoint some suitable person as receiver to take hold and administer said property for the advantage and benefit of the remaining stockholders of the New Orleans Picayune Printing Company until the further orders of this

26 honorable court.

34. Petition further avers that it is necessary, in order to protect petitioner in his rights pending the trial of this suit, that writs of injunction should issue against Mrs. Eliza Jane Holbrook, George Nicholson, and Charles T. Howard enjoining and restraining them and their agents and employees from removing any of the property belonging to the New Orleans Picayune Newspaper and Printing Establishment from the building at No. 66 Camp street, or from alienating or disposing of any of said assets or property, or from contracting any debts in the name of said establishment, or otherwise incumbering said property until the further orders of this hon. court.

35. And petitioner further reserves the right to apply for such writs and orders as may be necessary and proper to protect the receiver to be appointed.

36. Wherefore, the premises considered, petitioner prays that Mrs. Eliza Jane Holbrook, George Nicholson, R. W. Holbrook, and Charles T. Howard, all of this city, may be cited to

27 appear and answer the demands of this petition.

37. Petitioner prays that the said Mrs. Eliza Jane Holbrook and the said George Nicholson and the said Charles T. Howard may be so cited in their individual capacity, and that the said R. W. Holbrook and the said George Nicholson may be so cited and notified, as so-called commissioners pretending to have been appointed to liquidate the affairs of the New Orleans Picayune Printing Company, at the illegal and pretended meeting of the stockholders of the said company, held on or about the 18th of December, 1874.

38. Petitioner prays that, after all due and legal proceedings had, judgment may be rendered in his favor and against said Mrs. Eliza Jane Holbrook and the said George Nicholson and the said Charles

T. Howard individually, and against said George Nicholson and the said R. W. Holbrook, pretended commissioners as aforesaid, decreeing him (petitioner) to be owner of twenty fifty-firsts ($\frac{20}{51}$) of all of the property, rights, assets, good will, and stock on hand of the newspaper and printing establishment, situated at No. 66 Camp street, New Orleans, and known as the Picayune Newspaper and Printing Establishment, which said establishment is now held by and in the possession of said Eliza Jane Holbrook and the said George Nicholson and the said Charles T. Howard, and subject, upon the part of petitioner-in-law, to his *pro rata* liability to the said Charles T. Howard for the payment to him of any balance that may be due to him as the assign of Joseph Hernandez for the amount paid by the said Joseph Hernandez for the discharge of the twelve months' bond, upon which said Hernandez was surety, as particularly hereinbefore set forth.

39. Considering the annexed affidavit, and upon proper bonds given, petitioner prays that writs of injunction may issue directed to the defendants, Mrs. Eliza Jane Hoblrook, George Nicholson, and Charles T. Howard, enjoining and restraining them, and each of them, and each of their agents and employees, in the name of and until the further orders of *of* this hon. court, from removing any of the property belonging to the New Orleans Picayune Newspaper and Printing Establishment from the building at No. 66 Camp street, and from alienating or disposing of any of said property, and from contracting any debts in the name of said establishment or otherwise incumbering said property.

40. Petitioner further prays that your honor will appoint some suitable person as receiver, to take possession of the property hereinbefore described, situated at No. 66 Camp street, New Orleans, and consisting of the printing establishment known as the New Orleans Picayune Newspaper and Printing Establishment, now in the possession of the said defendants Mrs. Eliza Jane Holbrook and George Nicholson, and Charles T. Howard.

41. And petitioner prays that said receiver may be directed by this hon. court to administer the said property for the benefit of petitioner and of the other stockholders of the New Orleans Picayune Printing Company until the further orders of this hon. court.

42. Petitioner prays that the said receiver so to be appointed may be directed to cause an inventory of the said property to be made.

Petitioner prays for costs, and for all such further and general relief, as the exigencies of the case may demand and the law warrant.

(Signed) HENRY C. DIBBLE,
Attorney for Petitioner.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Edw. C. Hancock, being duly sworn, deposes and says that the averments in the above and foregoing petition contained are true

and correct, to the best of his knowledge and belief, so help him God, and that a writ of injunction is necessary to protect him in his rights.

(Signed) EDW. C. HANCOCK.

Sworn to and subscribed before me, this 25th Nov'r, 1876.

(Signed) WM. H. HOLMES,

31 *Second Justice Peace, Parish of Orleans.*

Order.

Let the defendants be notified to show cause, on Friday, Dec'r, 1st, 1876, at 11 o'clock a. m., why writs of injunction should not be granted as within prayed for, and why a receiver should not be appointed as prayed for.

New Orleans, November 25, 1876.

(Signed) B. L. LYNCH, *Judge.*

Act of Incorporation annexed to Petition.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this nineteenth day of December, eighteen hundred and seventy-three, before me, Robert C. Mott, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the several parties whose names are hereto subscribed, who
32 declared that they have covenanted and agreed, and by these presents do covenant and agree, and bind themselves, and those whom they represent, to establish and incorporated company for the object and purposes, and under the obligations, stipulations, and regulations, hereinafter set forth and contained, to wit:

Art. 1st. The name and style of this corporation shall be the New Orleans Picayune Printing Company. Its domicile shall be the city of New Orleans; it shall have a corporate seal with a device of a cotton bale; all legal processes shall be served on the president; it shall exist for twenty-five years from the date hereof, unless sooner dissolved as required by law.

Art. 2d. The objects of this corporation is to print and publish a newspaper or newspapers, and to carry on a printing and publishing business of every kind.

Art. 3d. The capital stock of this corporation shall be one hundred and twenty shares of stock of two hundred and fifty dollars each, making thirty thousand dollars.

33 Art. 4th. This corporation shall be governed by a board of directors of five persons who must be stockholders, and own at least one share of its capital stock. The first board of directors is hereby declared to be composed of Alva M. Holbrook, Peter St. Amand, and R. W. Holbrook, Alexander Walker, and E. C. Hancock, who shall serve until the first regular election, and until their successors are duly elected.

Art. 5. An election of directors shall be held on the first Monday of December of each year at the office of the company, at which election every share shall be entitled to one vote, and the directors elected shall hold their office for one year, or until their successors are duly elected. A failure to elect directors on the day named shall not dissolve this corporation, but the directors in office shall hold over until an election shall take place, and in case of failure to elect on the day indicated, a meeting for holding an election can be called by any three stockholders, after ten
34 days' notice, for the purpose of electing directiors.

Art. 6. The board of directors shall adopt such by-laws as may be necessary to manage the company, and appoint such offiers and clerks as may be required.

Art. 7. Dividends of the profits arising from the business shall be declared at such times as the board of directors may deem advisable.

Art. 8. The stock shall be transferred only on the books of the corporation.

Art. 9. The liquidation of the affairs of this corporation shall be by a commissioner to be appointed by a vote of the majority in amount of the stockholders, either at a regular or special meeting.

Art. 10. The Picayune newspaper establishment, recently purchased at sheriff's sale by the Herald Printing Company, and which has been by said company transferred and sold to A. M. Holbrook, is, by said A. M. Holbrook, now sold, delivered, and transferred to this corporation at the price and sum of thirty thousand dollars cash, which the said Holbrook acknowledges to have received, and the said establishment, as required at said sheriff's sale, is
35 the property of this corporation, and the shares of stock in this corporation are fixed at one hundred and twenty of two hundred and fifty dollars each, making an aggregate of thirty thousand dollars, and all said shares are full paid, and are distributed among the subscribers in the following proportion :

	Shares.
A. M. Holbrook	Sixty-three.
Peter St. Amand	One.
R. W. Holbrook	One.
E. C. Hancock	Six.
H. L. Swords	One.
F. H. Hatch	One.
Effingham Lawrence	One.
Joseph Hernandez	Eight.
H. S. McComb	Four.
Pinckard & Bickham	One.
W. H. Bell	One.
Wm. Mehle	One.
D. B. Penn	One.
Jno. T. Sinnott	One.
David Bidwell	Two.
Cyrus Bussey	One.

		Shares.
	Albert Shultz	One.
	Lovell & Bailey	One.
	Jos. Donaldson	One.
	Chris. Mehle	One.
	W. P. Harper	One.
	Thos. Barnes	Two.
	E. C. Hancock	Nine.
36	Alex. Walker	Ten.

This done and passed, at this city of New Orleans, on the day, month, and year first herein written, in the presence of Thomas J. Semmes and Robert Mott, competent witnesses hereto required, who have hereunto set their hands with the said parties, and me, notary, after reading the whole.

(Signed)	A. M. HOLBROOK,	sixty-three	shares.
	ALEXANDER WALKLR,	ten	"
	J. HERNANDEZ,	eight	"
	R. W. HOLBROOK,	one	"
	E. C. HANCOCK,	fifteen	"
	PETER ST. AMAND,	one	"

Witnesses: (Signed) THOS. J. SEMMES.
(Signed) ROBERT MOTT.
(Signed) R. C. MOTT, *Not. Pub.*

I have examined the within and foregoing act of corporation, and am of the opinion that the objects and purposes thereof are legal, and that none of the provisions therein contained are contrary to law, wherefore I approve of the same.

N. O., Dec. 20th, 1873.

(Signed) JOHN McPHELIN,
District Attorney for the First Judicial District.

37 STATE OF LOUISIANA, NEW ORLEANS, *December* 20, 1873.

(Signed) C. DARCANTEL, *D'y Rec.*

I, the undersigned deputy recorder of mortgages in and for the parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing is a true and correct transcript from the records of my office, as recorded in my office on the twentieth day of December, A. D. 1873, in Book No. 118, folio 305 and 306.

New Orleans, April 5th, 1876.

(Signed) C. DARCANTEL, *D'y Rec.*

Citation. Filed Nov'r 27, 1876.

State of La., Superior Dist. Court for the Parish of Orleans, in the City of New Orleans.

EDWARD C. HANCOCK
vs.
MRS. ELIZA JANE HOLBROOK *et als.* } No. 27661.

MR. CHARLES T. HOWARD: You are hereby summoned to comply

with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the
38 office of the clerk of the superior district court for the parish of Orleans within ten days after the service hereof.

Witness the Hon. B. L. Lynch, judge of the said court, this 25th day of November, A. D. 1876.

(Signed) P. E. BURKE, *D'y Cl'k.*

Sheriff's Return.

Received Nov'r 25, 1876, and on the 27th day of the same month and year I served a copy of the within citation and accompanying petition on Charles T. Howard in person. Re't'd same day.

Sh'ff's fee, $2.

(Signed) J. McCOUTTS, *D'y Sh'ff.*

Citation. Filed Nov. 27, 1877.

State of La., Superior Dist. Court, Parish of Orleans, in the City of New Orleans.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No 27661.

Mrs. E. J. HOLBROOK, *N. O., La.:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation,
39 or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorable B. L. Lynch, judge of the said court, this 25th day of November, in the year of our Lord 1876.

(Signed) P. E. BURKE, *D'y Cl'k.*

Sheriff's Return.

Received November 25th, 1876, and on the same day, month, and year served a copy of the within citation and accompanying petition on Mrs. E. J. Holbrook, one of the defendants herein, in person.

Ret'd same day.

(Signed) FRANK PFISTER, *D'y Sh'ff.*

Citation. Filed Nov. 27, 1876.

State of La., Superior Dist. Court for the Parish of Orleans, in the City of New Orleans.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 27661.

Mr. R. W. HOLBROOK:

You are hereby summoned to comply with the demand

40 contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior dist. court for the parish of Orleans within ten days after the service hereof.

Witness the Hon. B. L. Lynch, judge of the said court, this 25th day of November, A. D. 1876.

(Signed) T. E. BURKE, *D'y Cl'k.*

Sheriff's Return.

Rec'd Nov. 25, 1876, and on the 27th day of same month and year I served a copy of the within and accompanying petition on R. W. Holbrook in person.

Ret'd same day.

(Signed) S. W. SCOTT, *D'y Sh'ff.*

Citation. Filed Nov'r 27, 1876.

State of La., Superior Dist. C't for the Parish of Orleans, in the City of New Orleans.

ED. C. HANCOCK *vs.* MRS. E. J. HOLBROOK *et als.*

Mr. GEORGE NICHOLSON:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the su-

41 perior district court for the parish of Orleans within ten days after the service hereof.

Witness the Hon. P. L. Lynch, judge of the said court, this 25th day of November, A. D. 1876.

(Signed) P. E. BURKE, *D'y Cl'k.*

Sheriff's Return.

Rec'd Nov. 25th, 1876, and on the same day, month, and year I served a copy of the within citation and accompanying petition on George Nicholson in person.

Returned same day.

(Signed) S. W. SCOTT, *D'y Sh'ff.*

Rule Nisi. Filed Nov. 29, 1876.

State of Louisiana, Superior District Court for the Parish of Orleans.

ED. C. HANCOCK *vs.* HOLBROOK *et als.* } No. 27661.

The State of Louisiana to Mrs. Eliza Jane Holbrook, George Nicholson, R. W. Holbrook, and Chas. T. Howard, New Orleans, Louisiana, Greeting:

42 You are hereby commanded, in the name of the State of Louisiana, and of the superior district court for the parish

of Orleans, to show cause, on Friday, December 1, 1876, at 11 o'clock a. m., why writs of injunction should not issue herein, enjoining and restraining defendants, Mrs. Eliza Jane Holbrook, George Nicholson, and Chas. T. Howard, their agents and employees, from removing any of the property belonging to the New Orleans Picayune Newspaper and Printing Establishment from the building at No. 66 Camp street, and from alienating or disposing of any of the said property, and from contracting any debts in the name of said establishment or otherwise incumbering said property.

You are further commanded to show cause on the same day why the judge of this court should not appoint a receiver as is prayed for in plaintiff's petition, and herein fail not, under penalty of law.

Witness the Hon. B. L. Lynch, judge of our said court, this 25th day of Nov'r, A. D. 1876, and of the 101[st] year of the In-
43 dependence of the United States.

(Signed) P. E. BURKE, *D'y Cl'k.*

Sheriff's Return.

Received Nov. 25, 1876, and on the same day, month, and year I served a copy of the within rule *nisi* on George Nicholson in person. Returned same day.

(Signed) S. W. SCOTT, *D'y Sh'ff.*

And on the 27th day of same month and year I served a copy of the within rule *nisi* on R. W. Holbrook. Returned same day.

(Signed) S. W. SCOTT, *D'y Sh'ff.*

And on the 25th day of same month and year served a copy of the within rule *nisi* on Mrs. E. J. Holbrook, defendant herein, in person. Returned same day.

(Signed) FRANK PFISTER, *D'y Sh'ff.*

And on the 27th day of the same month and year I served a copy of the within rule *nisi* on Chas. T. Howard in person. Ret'd same day.

(Signed) J. McCOURTS, *D'y Sh'ff.*

44 *Note of Evidence. Filed Dec'r* 4, 1876.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. ——

Testimony taken in the superior district court before the Hon. B. L. Lynch, judge, December 4th, 1876, on the trial of the rule *nisi.*

Present: Henry C. Dibble for pl'ff.; Semmes & Mott & Jos. P. Hornor for defendant.

Offered in evidence, by Mr. Mott, the charter of the New Orleans Picayune.

Offered in evidence the record in the suit of Thomas Hoolihan *vs.*

The Herald Printing Company, No. 42674 in the 4th district court, offered for the purpose of showing a judgment against the company for over four thousand dollars ($4,000) in favor of the executors, and for the purpose of showing the sheriff's return of the execution issued in that suit.

Offered in evidence the affidavit of John Finney for the purpose of showing that there was such a suit instituted.

Also offered in evidence the record in the suit of Edward
45 C. Hancock against A. M. Holbrook, No. 7250 in the sixth district court, filed Jan'y 22, 1875.

It is admitted that such suit was dismissed and all the costs paid on the same day, but before this suit was instituted. Offered in evidence the record of the case of John H. Conniff against the New Orleans Herald Printing Company, being suit No. 7229 on the docket of the 6th district court, judgment rendered on the 18th of February, 1875.

Offered in evidence the suit of Meyer and Neumeyer against the New Orleans Herald Printing Company, No. 5718 in the 6th district court of New Orleans. Judgment rendered on the 30th of April, 1874, and paid by Mr. E. C. Hancock, $943.

Offered in evidence the record in the suit of William A. Weed against the N. O. Herald Printing Co., No. 5676 in the 6th district court.

Offered in evidence the two affidavits of Mrs. Holbrook, Peter Santimand's affidavit, Geo. H. Loyrd's affidavit, John Finney's affidavit, Girod Stith's affidavit, R. W. Holbrook's affidavit, George Nicholson's affidavit, Joseph Hernandez' affidavit.

46 Offered in evidence certificate of sixty-five (65) shares of stock annexed to the affidavit [of] Peter Santimand, two (2) certificates of stock of forty (40) shares each, to be found in the record of Weed against the New Orleans Herald Printing Company, No. 5676 in the sixth (6th) district court.

Offered in evidence by Mr. Hornor, in answer to the rule of plaintiffs, the affidavit of Charles T. Howard.

It is agreed between counsel that the evidence now offered on the trial of this rule shall be considered as offered only for that purpose, and shall not form part of the record of the case on the merits.

Note of Evidence. Filed Dec'r 6th, 1876.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK. } No. 27661.

Note of evidence taken in the superior district court before the Hon. B. L. Lynch, judge, December 6, 1876.

47 Present: Henry C. Dibble for plaintiff; Messrs. Semmes & Mott and Hornor for defendants.

Offered in evidence by Mr. Mott, two (2) affidavits of Mr. Henry C. Warmoth.

Offered in evidence by Judge Dibble, counsel for pl'ff, to rebut the affidavit filed by counsel for the def't.

First. The copy of the charter of the New Orleans Picayune Printing company, annexed to the petition.

Second. Offers in evidence the pretended resolution of the board of directors of the New Orleans Printing Company, to authorize the transfer of the property to Jos. Hernandez, which resolutions are set forth at length in plaintiff's petition.

Third. Offered in evidence a certified copy of what purports to be a transfer of the property of the New Orleans Picayune Printing Company to Joseph Hernandez, dated Dec'r 22, 1874, marked A.

Offered next, affidavit of defendant, Hancock, marked B.

Next, offered and filed the affidavit of Alexander Walker,
48 in reply to the affidavit of Henry C. Warmoth; this is an affidavit prepared by Judge Walker, and filed in the case of Barnes *vs.* The Picayune Printing Co.

Exception. Filed Dec'r 6, 1876.

Superior Dist. Court for the Parish of Orleans.

E. C. HANCOCK
vs.
E. J. HOLBROOK *et als.* } No. 27661.

Now comes the defendant, Mrs. E. J. Holbrook, by her undersigned counsel, and excepts to pl'ff's suit, on the ground that the court has no jurisdiction of subject-matter thereof.

2d. Because proper parties have not been made.

Wherefore defendant prays that suit be dismissed.

(Signed) SEMMES & MOTT, *Att'ys.*

The other defendants, except Chas. T. Howard, adopt and plead the foregoing exception and prayer.

(Signed) SEMMES & MOTT, *Att'ys.*

49 *Note of Evidence. Filed Dec'r the 8th*, 1876.

Offered in evidence by Judge Dibble additional affidavit of Alexander Walker, affidavit of J. L. Herwig, additional affidavit of E. C. Hancock, together with the copy of the answer filed by the pl'ff in the case of Barnes against The Picayune Printing Co., in the circuit court of the United States.

Additional affidavit of E. C. Hancock, affidavit of Marion A. Baker, affidavit of Durant Daponti, affidavit of M. F. Rigley, affidavit of C. E. Whitney, affidavit of R. M. Wild, affidavit of Henry Armstrong, offered in evidence by Mr. Mott; the testimony of E. C. Hancock, filed June 12, 1874, in the suit of Wm. A. Weed *vs.* The Herald Printing Co.

Answer of Chas. T. Howard. Filed Dec'r 9, 1876.

Superior District Court.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 27661.

Now comes Charles T. Howard, made defendant herein,
50 and for answer to the petition of plaintiff pleads a general denial of all allegations therein contained.

And for further answer respondent avers that he is the true and awful holder and owner of fifteen certain promissory notes, drawn by Alva M. Holbrook, since deceased, to his own order, and by him endorsed and payable respectively as follows, with six per cent. interest from date:

Seven notes of $850 each, payable on the 10th day of December, 1876, and January, February, March, April, May, and June, 1877.

Three notes of $500 each, payable respectively on the 10th days of Nov'r and Dec'r, 1877, and January, 1878.

One note of $911.38, payable 10th February, 1878; all of said notes being dated 22 December, 1874.

That on said 22 December, 1874, by act under private signature, said Alva M. Holbrook, in order to secure prompt and punctual payment of said notes, and others since paid, did pledge the
51 property alluded to in the petition herein filed, and known as the "New Orleans Picayune Newspaper Establishment, &c.," the same being then in his possession and under his control, to Joseph Hernandez, for the use and benefit of said Hernandez, and for that of any holder or holders of said notes, and on said day said Holbrook did deliver possession of said property to said Hernandez, and did constitute said Hernandez, and any future holder of said notes, his, said Holbrook's agent and attorney-in-fact, to sell said pledged property in the event of non-payment of any of said notes; and said Hernandez entered into possession of said pledged property and retained the same until some time on said 22 Dec'r, 1874, when said Hernandez transferred and delivered said notes and said pledged property unto Henry C. Warmoth for a valuable consideration; and said notes and said property were held in the possession of said Warmoth until the 20 June, 1875,
52 when said Warmoth, for a valuable consideration paid by respondent, transferred said notes and said pledged property to respondent, and he has held possession of the same ever since said date, and still holds possession thereof.

That on or about 16 October, 1875, respondent furnished to said New Orleans Picayune Newspaper Establishment type and other printing materials to the amount of $4,500, and it was orally agreed between respondent and said Holbrook that said pledge should extend to and cover said sum, and should not be satisfied or delivered up until said sum had been repaid; that said property was acquired by said Holbrook for a valuable consideration from said Hernandez, by act under private signature, dated New Orleans, 22

Dec'r, 1874, and said notes hereinabove set forth were given for part of the purchase price, and the vendor's lien, to secure payment of the price, was duly and at once preserved by recording said sale in the mortgage office of this parish.

53 That by law respondent has the vendor's lien and privilege upon said property for the payment of said notes, and holds said property as pledge of the same, and has the right to keep and retain possession thereof, as against every one, until his said debt, said notes, and said forty-five hundred dollars, and all interest, are paid, and no one has a right to oust respondent from such possession; that the appointment of a receiver herein would have the effect to deprive respondent of this pledge, and cause him to lose his debt through no fault of respondent, and no receiver should be appointed by this hon. court while respondent's said debt remains unpaid, unless respondent be appointed such receiver.

Wherefore respondent prays to be hence dismissed with costs, and for judgment in his favor, and for general relief.

(Signed) JOSEPH P. HORNOR, *Att'y.*

Petition to Remove to U. S. Court. Filed Dec'r 13, 1876.

To the hon. the superior district court for the parish of Orleans:

54 The petition of George Nicholson, with respect, represents:

That he is a citizen of the United States and a citizen of the State of Mississippi.

That he is a party defendant in this suit of E. C. Hancock *vs.* E. J. Holbrook *et als.*, No. 27661 on the docket of this hon. court. That the said suit is now pending in this court, and the matter in dispute therein exceeds, exclusive of all costs, the sum and value of five hundred dollars.

That the plaintiff in said suit is E. C. Hancock, who is a citizen of the State of Louisiana, and that this is the first term at which said cause could be first tried, and no trial thereof has been had.

That petitioner desires to remove said cause or suit from this hon. court into the circuit court of the United States for the fifth circuit and district of Louisiana, to be held in the district of Louisiana, at New Orleans; that for this purpose, and in compliance with the act of Congress, in such case made and provided, peti-

55 tioner has prepared and filed herewith his bond, with good and sufficient security, for his entering in said circuit court on the first day of its next session a copy of the record of said suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that said suit was wrongfully or improperly removed thereto.

Wherefore petitioner prays that the said suit of E. C. Hancock *vs.* E. J. Holbrook and another be removed into the circuit court of the United States for the fifth circuit and district of Louisiana, holding sessions at New Orleans according to law, that this hon. court proceed no further therein.

(Signed) SEMMES & MOTT,
Att'ys for Pet'r.

(Signed) GEO. NICHOLSON.

Bond for Removal. Filed Dec'r 13th, 1876.

Know all men by the presents, that we, George Nicholson, as principal, and John B. Patrick, of the city of New Orleans, and State of Louisiana, as surety, are held and firmly bound unto
56 Edward C. Hancock in the full sum of five hundred dollars, lawful money of the United States of America, well and truly to be paid to the said E. C. Hancock, his heirs, executors, administrators, or assigns.

Whereas the said E. C. Hancock has instituted a suit against Mrs. E. J. Holbrook and others, in which said suit the said Geo. Nicholson is defendant, and which said suit is now pending in the third district court for the parish of Orleans at the first term at which it could be tried, and the matter in dispute therein exceeds, exclusive of costs, the sum and value of $500, dated and sealed this 13 day of Dec'r, 1876.

Now the condition of the foregoing obligation is such, that in case the said George Nicholson shall fail to enter in the circuit court of the United States for the fifth circuit and district of Louisiana, on the first day of its next session, a copy of the record in the aforesaid suit of E. C. Hancock *vs.* E. J. Holbrook *et al.*,
57 No. 27661 on the docket of the superior dist. court for the parish of Orleans, and shall pay all costs that may be awarded by said circuit court, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be null and void, otherwise to remain in full force and effect.

(Signed) GEO. NICHOLSON. [SEAL.]
" J. B. PATRICK. [SEAL.]

I, Ben. Armbruster, clerk of the third district court for the parish of Orleans, State of Louisiana, do hereby certify that the foregoing thirty-four (34) pages do contain a true and correct copy of the petition, act of incorporation, annexed citations, note of evidence, rule *nisi*, exception, answer, petition to remove to U. S. court, and bond for removal in the matter in which Edward C. Hancock is plaintiff and Mrs. E. J. Holbrook *et als.* are defendants, and numbered 27661 of the docket of the late superior district court, transferred by law to this court, and No. 23653 on the docket of this court.

In testimony whereof, I hereunto set my hand and affix the
58 seal of said court, at the city of New Orleans, on this eighth day of December, in the year A. D. 1877, and the 102 year of the Independence of the United States.

[SEAL.] (Signed) BEN. ARMBRUSTER, *Clerk.*

I consent, on behalf of plaintiff, that this shall be considered a correct transcript of the record of the suit of E. C. Hancock *vs.* Mrs. E. J. Holbrook, No. 23653, 3d dist. court, parish of Orleans, the same to be filed in the U. S. circuit court, in accordance with the order to transfer.

N. O., Dec'r 11, 1877.

(Signed) HENRY C. DIBBLE, *Att'y for Pl'ff.*

Proceedings in U. S. Circuit Court.

Motion and Order. Exceptions Fixed.

Extract from Minutes November Term, 1877.

NEW ORLEANS, THURSDAY, *January 10th*, 1878.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

EDW. C. HANCOCK
versus
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

59 On motion of Henry C. Dibble, attorney for pl'ff, it is ordered that the several exceptions filed by the defendants in this case before its removal from the State court be fixed for hearing on 19th instant, at 11 a. m., and that the several exceptors be notified thereof.

Order on Exception.

Extract from Minutes of January 19th, 1881.

EDW. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 155.

The exception in this cause came up for trial. Henry C. Dibble, for pl'ff; Thos. J. Semmes, for def't.

When it was agreed by counsel that the plaintiff do furnish, as part of the transcript, a certified copy of the supplemental and amended petition filed in the State court, and the exceptions being thereupon submitted to the court, it was ordered that the
60 petition in the State court stand as a bill in chancery, and that the cause hereafter be conducted as a chancery suit.

Additional Transcript. Filed January 22d, 1878.

Supplemental and Amended Petition. Filed Dec'r 19, 1876.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK. } No. 27661. Superior D. C.

The amended and supplemental petition of plaintiff respectfully shows—

That there was an error in the original petition herein filed in the statement that George Nicholson and R. W. Holbrook were the pretended commission pretended to have been appointed at the pretended meeting of stockholders referred to in the petition as having been held Dec. 22, 1873.

Petitioner now avers that in truth, as petitioner has learned, the said R. W. Holbrook and Richard Fitzgerald, a resident of this city, and a citizen of this State, were the persons so pretended to have been appointed instead of the said R. W. Holbrook and

61 George Nicholson, as alleged in plaintiff's original petition, the said George Nicholson being also a party defendant hereto in his individual capacity.

Wherefore plaintiff prays that he may be permitted to file, this amended and supplemental petition, and that Richard Fitzgerald, a resident of this city, may be made a party to this suit, and that he may be cited and served with a copy of the original petition herein filed and this amended and supplemental petition. Plaintiff prays for general relief.

(Signed) H. C. DIBBLE,
Att'y for Pl'ff.

Order.

Let this amended and supplemental petition be filed and service made as prayed for.

N. O., Dec. 19, 1876.

(Signed) B. L. LYNCH, *Judge.*

Citation.

State of Louisiana, Superior District Court for the Parish of Orleans, in the City of New Orleans.

62 E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 27661.

Mr. RICHARD FITZGERALD, *New Orleans, Louisiana:*

You are hereby summoned to comply with the demand contained in the amended and supplemental petition, of which copies accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court, for the parish of Orleans within ten days after the service hereof.

Witness the Honorable B. L. Lynch, judge of the said court, this 19th day of December, in the year of our lord 1876.

(Signed) P. E. BURKE,
Deputy Clerk.

I, Ben. Armbuster, clerk of the third district court for the parish of Orleans, and legal custodian of the records of the late superior district court, do hereby certify that the foregoing is a true copy of the originals on file in this office.

New Orleans, Jan'y 21, 1878.

63 [SEAL.] (Signed) BEN. ARMBUSTER, *Clerk.*

Order. Exception Overruled.

Extract from the Minutes of January 31st, 1878.

EDWARD C. HANCOCK
vs.
Mrs. C. J. HOLBROOK. } No. 8320.

The additional transcript from the State court having been filed, it is ordered that the exception herein be overruled.

Answer of Mrs. E. J. Holbrook. Filed March 15, 1878.

EDW. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320.

The answer of Eliza Jane Holbrook, one of the defendants, to the bill of complaint of Edward C. Hancock.

This defendant, reserving all exceptions to the errors and uncertainties in plaintiff's bill contained, for answer thereto, or to so much thereof as she is advised it is material for her to make answer to, saith:

64

1st. It is true that on the 19th day of Dec'r, 1873, the New Orleans Printing Co. was organized, as set forth in the plaintiff's bill.

2. It is — that there was a corporation styled the Herald Printing Company, which published a newspaper known as the New Orleans Herald, as set forth in said bill.

3. It is true that the New Orleans Picauyne had, prior to the 19 Dec'r, 1873, been published by the Picayune Publishing and Printing Company, which was then in a bankrupt condition, as set forth in said bill.

4th. It is true that the said newspaper and printing establishment was sold, and bought, as set forth in said bill of complaint.

5th. That it is true that the Herald Printing Company entered into the possession of the Picayune newspaper establishment, and proceeded to conduct the same, but whether it administered the same with success the respondent is not advised and does not know, but she has been informed and believes, and so charges the

65

fact to be, that the same is not true, and that said administration was not successful, and therefore she denies the said averments; and further answering she says that she knows nothing of the averments of said bill; that while in possession of said property propositions were made to said Herald Company by H. C. Warmoth, on behalf of A. M. Holbrook, and on behalf of Joseph Hernandez, and on behalf of said Warmoth himself, for the sale of said Picayune establishment to said A. M. Holbrook in consideration of the assumption by said Holbrook of the payment of the twelve months' bond given as the price of said paper by said Herald Company, with said Hernandez as surety, in lieu of said Herald Company, and of the deposit of securities as set forth in said bill of complaint, further than the facts are shown by the written acts of the parties, to which reference will be made in another part of this answer.

6th. Respondent does not know anything of propositions by said Warmoth for the transfer of said Picayune establishment, as

66

set forth in said bill of complaint; nor does she know anything of the 7th, 8th, 9th, and 10th averments of said bill of complaint further than the written obligations and contracts of the parties thereto set forth the same, and she pleads that all the transactions of the said parties were reduced to writing in the form of contracts or stipulations, and what occurred before at the time of,

or subsequent to, said written agreements cannot be proved by parole, and she cannot be called on to admit or deny the same.

11th. It is true that the par value of the stock of said company was fixed at $250, but she denies that the stock was worth that much at any time, and avers that the said stock never had any other than a fictitious and nominal value.

12th. That it is true that the president and directors named in the charter of the Picayune Printing Company, of which A. M. Holbrook was president, proceeded to and did administer the affairs of said company; but it is not true, as averred in said bill,
67 that the business of said company prospered, and that large assets accumulated; and it is not true that the revenues of the establishment were amply sufficient, if properly administered, to pay all expenses, to meet its debts justly due, and to return a dividend to the stockholders; but on the contrary this respondent avers that the said company did not make money enough to pay the legitimate and proper expenses thereof; that this was in a great measure caused by the improper conduct of the plaintiff, who, instead of giving the support, aid, and assistance to the enterprise which it was his duty as a stockholder to give, he did many and various acts to injure the same, as will be set forth hereafter in this answer.

13th. That respondent knows nothing of the directory of said company further than the records thereof show, but she denies that the directors were elected with a view of perpetrating a fraud and wrong upon the plaintiff and the other stockholders of said
68 company, as charged in said bill of complaint.

14th. Respondent denies that A. M. Holbrook confederated and combined with Peter St. Amand and R. W. Holbrook to administer said property and its earnings with the view to unlawfully, fraudulently, and wrongfully converting the property of said corporation to the satisfaction and payment of the personal indebtedness of said A. M. Holbrook to thereafter transfer to him and vest in him the ownership thereof in disregard of the rights of the plaintiff and other stockholders of said company; and respondent denies that there was any fraud, a combination, or intention to injure the plaintiff or his associates.

15. Respondent admits that at a meeting of the stockholders of said Co. on the 14 Dec'r, 1874, the resolution copied into the bill of petitioner authorizing the sale of said establishment to Jos. Hernandez was passed, but respondent denies that the said A. M. Holbrook, the president, convened said meeting of directors in
69 furtherance and execution of any fraudulent scheme whatever, but on the contrary this respondent avers that the same was done in good faith, and for the purpose of protecting the surety on the bond of the aforesaid Herald Company, which was executed at the instance of the plaintiff in this suit.

16th. It is true that at the meeting of the stockholders the plaintiff and Alexander Walker were absent, and that Alexander Walker presented a protest against the said action of the board; but it is also true, and this respondent avers the

fact to be, that, although regularly notified to attend the meetings of the said board of directors, the plaintiff did not attend any of the meetings thereof, except the first one or two, and the said Walker attended but few of said meetings, and said protest of said Walker was invalid, and untruthful in fact; and moreover, at that time the said Walker was not a stockholder of said company and consequently not legally a director thereof, and had no right
70 to protest for himself or any other person against the proceedings of said meeting of directors.

17th. Respondent denies that there was any combination to exclude the plaintiff from participation in the management of the said corporation, but the proportion of control to which he was entitled was extended to him, and the fact is he did not attend the meetings to give his aid and advice, but persistently remained away therefrom, and did all he could to injure the concern. And respondent further denies that there was any fraudulent purpose to exclude said plaintiff from the meetings of said board, or that there was any improper confederacy to injure him, and denies that he ever did attend said meetings, except the first, or that he at any time protested against the action of said board.

18th. It is true that A. M. Holbrook took possession of the said establishment as the agent of said Jos. Hernandez, although the said bond was not due, yet the fact is, and so respondent avers the same to be, that the said Herald Printing Company was insolvent and
71 unable to pay said bonds; that the said Herald Company, through its president, was notified that the said bond was about maturing, and that A. M. Holbrook was not able to pay the same, and that the said company must provide for the said bond to hold the said Hernandez, the surety thereon, harmless, and that neither the said Herald Company nor the plaintiff, although aware of the fact that the said bond would not be paid by the principal thereon, or by any person for its account, failed to provide for said bond; and the said Hernandez, who, to protect himself, paid the said bond as the surety of the said Herald Company, thereupon demanded that the property he had thus paid for should be transferred to him, which was done in good faith and for an honest purpose. And respondent denies that there was any fraud in the said transaction, or that anything was then done to screen said Holbrook from the payment of said bond, or that the said establishment was fraudulently converted or misapplied, as set forth in said bill.

72 19th. It is not true, as charged in said bill, that, as a further step in a fraudulent transaction, the said A. M. Holbrook, president of said company, on the 18 December, 1874, convened an illegal and pretended meeting of the stockholders of the said company, at which meeting, by a vote of persons not entitled to vote therein, it was declared that the Picayune Company was dissolved; but the fact was and is that the said meeting of stockholders was legally convened and was legally held and composed of the proper stockholders of said company, in number and amount as required by law, and the charter of said company and

the said corporation was honestly, legally, and properly dissolved, and R. W. Holbrook and Richard Fitzgerald were appointed liquidators thereof, and the plaintiff, as well as the other stockholders, was bound by the proceedings of said meeting of stockholders.

20 and 21st. That it is not true, as stated in said bill of complaint, that immediately after said meeting of stockholders and the appointment of said commissioners to liquidate the affairs of
73 said company, the said Hernandez transferred said Picayune establishment to said A. M. Holbrook for the stated consideration of $20,220, to be paid in monthly installments and from the earnings of said establishment, and its earnings had never ceased to be the rightful property of said Picayune Printing Co. and its stockholders; on the contrary, A. M. Holbrook bought the said property for the price of $32,500 *dollars*, of which amount he paid $5,000 in cash, and gave his notes for $27,500, as will be more fully explained and set forth in this answer, but it is true that A. M. Holbrook did obtain possession of said newspaper establishment as owner, and held and possessed the same as such up to the time of his death; and this respondent, as his legatee and instituted heir, has held and possessed and owned the same since his death, except one-fourth thereof, which she transferred to George Nicholson, her co-def't herein.

22d. It is not true, as alleged in said bill of complaint, that
74 said A. M. Holbrook came into the possession of said property in a fiduciary capacity, and that he held the same in trust for the benefit and advantage of the Picayune Printing Company, nor is it true that said Hernandez had knowledge of any such trust.

23d. This respondent, further answering, saith that the averment of the said bill of complaint, that the said A. M. Holbrook was not a stockholder of the said Picayune Printing Company at the time the said resolution to dissolve said corporation was passed, is not true in fact, but the fact is that the said A. M. Holbrook was as much a stockholder in said corporation as any other of the corporators—the plaintiff included. And respondent avers that none of the said stockholders paid anything for their stock, but passed as stockholders from the Herald Company, a bankrupt and insolvent concern, into the Picayune Printing Company without having furnished any capital whatevever, the only asset of which said last corporation was the Picayune Newspaper and Printing Establish-
75 ment, for which nothing was paid, and the price of which was due, and for which the said Herald Company was primarily liable, with said Joseph Hernandez as its surety; and it was because this asset was morally pledged to said Hernandez, it was transferred to him, and when so transferred there was nothing left of the said corporation, and it was properly dissolved and put in liquidation. And respondent avers that the stockholders who composed said meeting were *bona fide* stockholders, and their action was proper and just, and the plaintiff has the right to complain, as he at no time tendered the money to pay the said twelve months' bond,

given for said property to the sheriff, or to said Hernandez, who paid the same as surety for the Herald Company, and who signed said bond at the special instance of the plaintiff and Alexander Walker, the president of the Herald Company, who, with the plaintiff, averred themselves to be the principal stockholders of the said Herald Company; and the respondent further denies that there was any
76 fraud or wrong doing in any of the aforesaid transactions, and pleads that the said plaintiff has set forth no cause of action.

24th. It is true that H. S. McComb did not own any shares of stock in the said Picayune Printing Company, and that there never was any such stock in existence.

25th. It is not true, as set forth in said bill, that the sixty-five shares of stock, issued to A. M. Holbrook, reverted to the said Picayune Printing Company, and that the plaintiff is the holder of twenty shares of the fifty-one remaining shares; but it is true that all the shares of stock of the said Picayune Printing Company, save and except the twenty shares claimed to be owned by the plaintiff, are the stock of this respondent, the same having been acquired by her from the estate of her said husband; and respondent having answered the averments of the said bill of complaint of plaintiff, will now set forth the facts as they really are, as she has been informed and believes them to be.

77 The late A. M. Holbrook had been a successful and skillful manager of a newspaper in New Orleans for many years, and his had been almost, if not, the only paper that had continued in existence for any number of years; he had sold the Picayune Newspaper and Printing Establishment to a company of gentlemen, a year or two before the 18th Dec'r, 1873, for a sum equal or nearly equal to $100,000, which money he received. These gentlemen, organized as the New Orleans Printing and Publishing Company, had failed in their enterprise; the sheriff had sold out the said establishment, and at the sale, on twelve months' time, the said New Orleans Herald Company had become the purchaser for $20,000, and furnished bond, with Joseph Hernandez as surety. Said Hernandez was, and is, a man of wealth, in good credit, and was compelled to protect his name, and would not have signed as surety for the said Herald Company, nor for the plaintiff, nor for Alexander Walker, but was induced to do so, and to become said surety
78 at the instance and special request of H. C. Warmoth, who verbally agreed and stipulated that he, the said Warmoth, would hold the said Hernandez harmless for said bond, and that he should be secured against the same.

The fact is that said Warmoth was one of the stockholders of the Herald Company, and as having advanced the same money to enable it to exist. Said plaintiff was a stockholder for ten shares, and Alexander Walker was a stockholder for ten shares, and all the other stockholders were gentlemen who merely gave their money to start a newspaper, which was to advocate certain political principles, at that time advocated by H. C. Warmoth, they not taking any interest or part in the management of said Herald

paper; and it has been averred by plaintiff that the said Warmoth agreed to advance in the support of said paper the sum of $20 or $25,000; and respondent knows, and avers, that he did advance and loan to said Herald Company a large sum of money, which was due to him at the time the said Herald Company
79 purchased the Picayune establishment, as aforesaid. That the said plaintiff and A. Walker, who were the subscribers to ten shares of stock each of the said Herald Company, paid no money therefor, and if they gave any real value, it was some machinery and material which they purchased, and, as respondent is informed and believes, they did not pay for, and for the balance they were to render services as editors and employees of said company; that there was left unsubscribed of the stock of the said Herald Company some eighty shares of stock, and under some arrangement, agreement, or understanding, the terms of which, and the extent and meaning of which, are unknown to respondent, forty shares of said stock were put in the name of plaintiff and forty shares in the name of said A Walker, but in these transactions no money was paid. Yet these share of stock, or some sixty-five shares of them, were in some way assigned and transferred to said H. C. Warmoth, who appeared on the stock-book of said
80 Herald Company to be the holder thereof, in addition to the four shares for which he paid a value; and respondent is informed and believes that the said sixty-five shares of the stock were assigned and transferred to said Warmoth to secure him for the sum of money then due him by said company, and for other sums he might thereafter advance thereto. And respondent avers that he did control, and used it, as she is informed and believes, with the assent of the plaintiff and of said Walker, and received a value therefor from the said A. M. Holbrook, who gave him his promissory notes for five thousand dollars for the same, and which notes he, said Holbrook, afterwards paid to the said Warmoth. That this was part of the transaction by which the said Holbrook became the owner of the New Orleans Picayune Newspaper Establishment, which was accomplished through the negotiations of the said H. C. Warmoth.

Previous to the sale of the said establishment, said A. M. Holbrook had informed said Warmoth that he, said Holbrook, intended to buy said property at the sheriff's sale, and that he had,
81 which was a fact, applied to said Joseph Hernandez to be his surety on the twelve months' bond; whereupon said Warmoth declared that he had arranged to purchase said property through Alexander Walker, and if said Holbrook would not bid at said sale he, Warmoth, would guarantee him that he should have a controlling interest in said newspaper establishment, and after the sale Warmoth offered to carry out said agreement by having said property transferred to said Holbrook by the Herald Company on the condition that the said A. M. Holbrook would pay said Warmoth the sum of five thousand dollars, in consideration of which all the property of the said Herald Company should be conveyed and assigned to said A. M. Holbrook, who should then become the sole

and absolute owner of the whole of the property of the said company, and would thus prevent the publication of the said Herald newspaper, or of any other newspaper, as a rival of the Picayune newspaper, which it was the intention of said Holbrook to publish
82 when he became the owner of the said property sold by the sheriff in the case of John Phelps *vs.* The New Orleans Picayune Printing and Publishing Co., No. —— on the docket of the 6th district court for the parish of Orleans, but when the said transaction was to be effected and the whole of the property, so as aforesaid, was to be transferred and assigned to said Holbrook, he was required, as a condition of the transfer and assignment of the effects of the Herald Company, to assume all the debts of that company, under the declaration that the debts of that company must be paid from its assets; said Warmoth refused to make such assumption, and thereupon said Warmoth declared that the same thing could be and would be accomplished by the transfer and assignment to said Holbrook of sixty-five shares of the capital stock of the said Herald Company, in full property, that being a majority of all the capital stock thereof, and, this being assented to, said sixty-five shares of stock were assigned to said Holbrook, and the certificate of stock for the same duly signed
83 by the president and secretary of said company, was delivered to him by said Warmoth, as aforesaid, and the Picayune Newspaper and Printing Establishment was by the said Herald Company transferred and assigned to said A. M. Holbrook, who became the owner thereof; and the said transaction was a whole and formed part of the transaction, by which the New Orleans Picayune Printing Company was to be established and formed out of the stockholders of the Herald Company, which was to be extinguished. That the charter of the said Picayune Printing Company was signed by part of the parties designated therein as stockholders, the whole of the said stockholders having been stockholders in the said Herald Company, and the number of shares allotted to each stockholder in the said Picayune Printing Company, corresponding to the number of shares which each of said stockholders claimed to own in the said Herald Company, except four shares of stock that had belonged to said H. C. Warmoth in the said Herald Company, which were placed as belonging in
84 the said Picayune Company to said Jos. Herdandez.

Respondent, further answering, avers that the principal stockholders in the said Picayune Printing Company were A. M. Holbrook, sixty-three shares; Edward C. Hancock, fifteen shares; and Alexander Walker, ten shares; which said three parties were what is known as newspaper men, and men well skilled in the management of newspapers, and it was intended when the said Picayune Printing Company was formed, that they should contribute their experience, ability, and support to the successful conduct of the New Orleans Picayune newspaper, which was to be published by said company, and that said A. M. Holbrook was, as the owner of 63 shares of the stock thereof, to have the controlling management of said company and newspaper, and it was from the

successful publication of such a paper that the profits of the corporation were to arise, and the means of paying the bond for $20,000, given to the sheriff, were to be procured; that instead of the said
85 Hancock and Walker giving their experience, ability, and support to said enterprise, they became the enemies thereof, and destroyed, as far as their enmity could, the prosperity thereof, and the consequence was, the corporation did not make money enough during the year of its existence to pay the expenses thereof, and no profits whatever were made. And respondent further avers that one of the main inducements to the said A. M. Holbrook for entering into said transaction with said Warmoth, said Hancock, and said Walker, for the acquisition of the New Orleans Picayune establishment, and the publication of the New Orleans Picayune newspaper, was the suppression of the Herald newspaper, a rival establishment, which had been conducted by said Hancock and Walker as editors, and which had greatly reduced the earnings of the Picayune, and to prevent the publication of any other newspaper with the machinery and materials thereof, to accomplish which 65 shares of the stock of the Herald company had been assigned to him, that being a majority of all the stock thereof;
86 but that object was defeated by the conduct said of Hancock and Walker, who denied the validity of said Holbrook's title thereto, denied that he had any right to exercise any authority as a stockholder of said Herald Company, and so managed, or neglected to manage, the affairs of that company as to have another newspaper, known as the Bulletin, to be printed and published from the use of the machinery and material of the said Herald Company, to the great detriment of the Picayune Company, all of which prevented the success of this last company, and at last the property of this said Herald Company was sold out by the sheriff for the debts of said company, and was bought by the proprietors of the said Bulletin newspaper, who had been publishing their paper from the use of the materials and property of the said Herald Company, as aforesaid, and they continued their rivalry with the Picayune, to the great detriment thereof, all of which occurred through the improper conduct of the plaintiff, which aided to and did destroy the value of the Picayune property. And respondent avers that when the said Herald Company sold the
87 said Picayune establishment to said A. M. Holbrook, said company was insolvent, and that when the Picayune Printing Company was organized it had no money or capital, the stockholders of the Herald Company, when they formed themselves into the Picayune Company, brought no capital with them, having left all the property thereof to the creditors of the Herald Company, and the newspaper itself, being a thing dependent for success on its popularity and good management, could not succeed when two of its principal proprietors were its declared and open enemies, and so acting as to prevent success, whence it failed; and when the said corporation was dissolved at the meeting of the stockholders, in December, 1874, it had no assets of value.

Respondent further answering says, that when the said twelve

months' bond was about falling due, Joseph Hernandez, who was the surety thereon, and who was a man of wealth, called on the said Herald Company and on the said A. M. Holbrook to pay the
88 same, which they both declared their inability to do, whereupon the said Hernandez paid the said bond and became the owner thereof, and thereupon he demanded of the said Holbrook, as the president of said Picayune Printing Company, that the said Picayune establishment should be sold and transferred to him, which was done.

He had paid for the property, and it was proper that he should have it. After he became the owner of said property said Hernandez offered to transfer the same to the Herald Company for the amount of said bond—this was, after some negotiation, declined on the ground of want of ability to pay the price—then the property was sold to A. M. Holbrook for the sum and price of $32,500, $5,000 having been paid in cash, and then and there the said Holbrook became the sole owner of said property.

And respondent further says, that the said plaintiff has no right of ownership in said Picayune establishment; that it never was purchased by him wholly or in part, and that the only par-
89 ties who had any right or title to the said property was the Herald Company, who paid nothing therefor, and the said Hernandez, who did pay therefor, and that those are the only parties who can question the title of defendant to said property; that the said Herald Company and the stockholders thereof are not asking for relief, nor can they ask relief until they pay the debt contracted by that company and paid for their account of Joseph Hernandez.

Respondent avers that in the whole of the proceedings aforesaid the said Joseph Hernandez acted at the instance and request of said H. C. Warmoth, who furnish[ed] him with the money with which he paid said bond, and that the amount said A. M. Holbrook paid for the said Picayune establishment, say the sum [of] $32,500, was paid to said Warmoth, who received the money and obligations given for the price thereof, and before maturity sold and disposed of said securities to Chas. T. Howard, to whom the whole amount thereof has been paid by said Holbrook during his lifetime, and since his death by respondent and George Nicholson; that to George Nicholson was transferred one-fourth interest in
90 said property, according to the request of the late A. M. Holbrook; and respondent further answering saith, that at no time was the stock of the said Picayune Printing Company ever worth 250 dollars per share, and she denies that it ever had any but a speculative value, and she denies that at the time the said company was formed it had any value, except what might be given to it by the actings and doings of those who were to manage it.

Respondent further avers that the said Picayune Printing Company had at the time of its creation no money or credit, and that it was necessary to have both to enable it to conduct a newspaper and printing establishment, and said A. M. Holbrook was called upon

and did furnish the same, and maintained the said establishment through his means and credit and by borrowing money therefor.

Respondent further avers that the plaintiff paid nothng for the stock that he avers he owns in the said Picayune Company;
91 that he has solicited the stockholders thereof to donate to him their shares, and he acquired the naked title thereto for the purpose of starting and continuing a litigation in which he has in fact no pecuniary interest, and which he should not be permitted to maintain.

And respondent further avers that at the time of the dissolution thereof, say 18th Dec'r, 1874, or thereabouts, the said A. M. Holbrook was the owner of eighty-five shares of said stock of said Picayune Printing Company, and his friends controlled and owned nine shares of said stock, and all of the owners of said ninety-six shares consented to the said dissolution.

Respondent pleads that H. C. Warmoth and Joseph Hernandez are necessary parties to this bill, and that the same cannot be properly prosecuted without they be made parties defendant.

And further answering this defendant denies all the averments and charges of fraud, combination, and conspiracy, as charged in said bill, and further denies that the plaintiff is entitled to the
92 equitable consideration of the court, and hereby prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) MRS. E. J. HOLBROOK.
" ROBERT MOTT, *Sol.*
" THOS. J. SEMMES.

Personally appeared Mrs. E. J. Holbrook, defendant in the above entitled suit of E. C. Hancock *vs.* E. J. Holbrook *et al.*, and, being sworn, saith, that the facts and averments therein contained stated as such are true, and those stated on information and belief she believes to be true, to the best of her knowledge and belief.

Sworn to and subscribed before me, this 15th day of March, 1878.

(Signed) R. C. MOTT,
Notary Public in and for the Parish of Orleans, Louisiana.

Answer of Geo. Nicholson. Filed March 15th, 1878.

93 EDWARD C. HANCOCK *vs.* MRS. E. J. HOLBROOK *et al.*

The answer of George Nicholson, one of the defendants, to the bill of complaint of Edward C. Hancock.

This defendant, reserving all exceptions to the errors and uncertainties in plaintiff's bill contained, for answer thereto, or to so much thereof as he is advised it is material for him to make answer to, saith:

That this respondent knows nothing of the matters and things charged in said bill of complaint previous to the 18th December, 1874, when commissioners were appointed to liquidate the affairs of the New Orleans Picayune Printing Company.

Respondent denies that he ever was a party to any fraud, combi-

nation, or conspiracy, to injure or defraud the plaintiff or any stockholder of said company, and he further denies the averments and allegations in the plaintiff's said bill of complaint, tending in any way to charge respondent with any wrongful act.

94 Respondent admits that he is one of the proprietors of the New Orleans Picayune Newspaper and Printing Establishment, and avers that he owns one-fourth thereof, which he acquired from Mrs. Holbrook by purchase for a valuable consideration; that he acquired said property in good faith, and by doing so, he has in no way injured the plaintiff, whose claim, if good, can be satisfied out of the three-fourths of said establishment still belonging to the said Mrs. Holbrook.

Respondent further answering saith, that he was a stockholder in the said Picayune Printing Company for two shares, on the 18th December, 1874, and he voted for a dissolution of said company, because it was right and proper that said dissolution should take place, and he was aware of the fact that the owners of ninety-four of the shares of said stock were in favor of said dissolution, and either voted for, or approved the same.

And this respondent further answering saith, that he denies all interest in the subject-matter of plaintiff's suit, and pleads

95 that the proper parties are not before the court, and that H. C. Warmoth, Joseph Hernandez, and all the stockholders of the Herald Company should be made parties hereto, and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) GEO. NICHOLSON.
" ROBERT MOTT.
" THOS. J. SEMMES.

George Nicholson, being sworn, says that the facts and averments set forth in the foregoing answer are true.

Sworn to and subscribed before me, at this city of New Orleans, Louisiana, on this 14th day of March, 1878.

(Signed) R. C. MOTT,
Notary Public in and for the Parish of Orleans.

Entry in Chancery Order Book.

MARCH 15TH, 1878.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

96 Mrs. E. J. Holbrook and George Nicholson, defendants herein, have this day, by their solicitors, filed their separate answer to the complainant's bill of complaint.

Agreement. Filed March 26th, 1878.

E. C. HANCOCK *vs.* Mrs. E. J. HOLBROOK *et al.*

It is agreed that the defendants shall have ten days within which

to file their answers in this case, from to-day, and that the replication may be filed immediately after filing the answers, and that the 3 months for taking testimony shall commence in ten days from this date.

New Orleans, 2d March, 1878.

(Signed) ROBERT MOTT.
(Signed) HENRY C. DIBBLE.

Supplemental Bill. Filed March 26th, 1878.

To the honorable, the judges of the circuit court of the
97 United States within and for the district of Louisiana, sitting in equity:

Humbly complaining showeth unto your honors your orator Edward C. Hancock, that your orator did file a petition in a suit against Mrs. Eliza Jane Holbrook, George Nicholson, and Chas. T. Howard, in the superior district court for the parish of Orleans, State of Louisiana, on the 25th day of November, 1876; that subsequently, to wit, on the 13th day of December, 1877, the said action was transferred to, and filed in, this honorable court, and an order was made herein, the 19th day of January, 1878, that the said petition stand as a bill in equity, and be proceeded with accordingly; and your orator further shows that, after proceedings immaterial, the said defendants, Eliza Jane Holbrook and George Nicholson, put in their several answers to the said bill, which said answers were filed on the 15 day of March, 1878.

And your orator further showeth that in his said original petition or bill so filed in said State court he reserved his right to maintain
an action against said defendants for the recovery of the
98 proportion of profits and dividends which should have accrued to him *pro rata* as a stockholder in the said New Orleans Picayune Printing Company, which said reservation your orator showeth was contained in the 31 paragraph of said petition or bill; but now your orator further avers that he is advised that it is necessary for him, in order to avoid a multiplicity of actions, to so amend his said petition or bill, as to require an account of the said profits and earnings in this suit, and that he should pray for a settlement thereof.

Thereunto your orator, with leave of the court first had and obtained, amends his said bill by inserting the following clause, immediately after the 31st paragraph of said bill, and following the words "as hereinbefore set forth," to wit:

"Your orator further showeth that the said defendants, Mrs. Eliza Jane Holbrook and George Nicholson, while in the possession of the said property known as the New Orleans Picayune Newspaper and Printing Establishment, have made large
earnings therewith, whereof they have made no account to
99 your orator, nor has your orator been paid any portion of such profits or earnings, although therein and thereunto entitled; and your orator further showeth that, by the answer of the said defendant, Eliza Jane Holbrook, it is set forth, and your ora-

tor therefore avers, that the said defendants have now discharged and paid in full the debt due to the said Charles T. Howard, with which said property was charged, as set forth in said original bill, by and with the earnings of said establishment, as your orator now avers, whereupon and whereby your orator avers he has become entitled to a *pro rata* distribution of the earnings and profits of the said newspaper and printing establishment from the time the same came into the possession and control of the said defendants until final decree herein."

And thereunto your orator, with the leave of the court first had and obtained, further amends his said bill by inserting the following clause immediately after the 38th paragraph of his said bill, and following the words "hereinbefore set forth," to wit:

"Your orator humbly prays that a full and complete ac-
100 count may be had and taken of all of the earnings and profits which have been, or which should have been, made or realized by the said business of the said New Orleans Picayune Newspaper and Printing Establishment since and while the same has been in the hands of and under the control of the said defendants, Mrs. Eliza Jane Holbrook and George Nicholson, or either of them, and until final decree herein, award and grant to your orator a decree for his full *pro rata* of the said earnings and profits of the said establishment in proportion to your orator's interest and ownership therein and thereunto."

And may it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America to be directed to the said defendants, Mrs. Eliza Jane Holbrook and George Nicholson, commanding them and each of them by a certain day, and under a certain penalty therein specified, to be and appear before your honors in the circuit court of the United
101 States for the district of Louisiana, and then and there to answer the premises, and abide the order and decree of the court.

(Signed) HENRY C. DIBBLE, *Solicitor.*

Let this supplemental bill be filed.
March 26th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Entry in Chancery Order Book.

MARCH 26TH, 1878.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320.

Complainant, by leave of court, has this day filed his supplemental bill of complaint for amendments to his original bill.

SAME
vs. } No. 8320.
SAME.

Set down upon defendants' objection, for want of parties.

Subpœnas in Chancery Issued March 26th, 1878.

102 The President of the United States to the marshal for the district of Louisiana, Greeting:

You are hereby commanded to summon Mrs. Eliza Jane Holbrook and George Nicholson to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of April, 1878, then and there to answer a supplemental bill in chancery filed against them, and each of them, wherein Edward C. Hancock is complainant, and said Mrs. E. J. Holbrook and George Nicholson are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 26th day of March, A. D. 1878, and the 102d year of American Independence.

[SEAL.] (Signed) F. B. VINOT, *D'y Cl'k.*

103 The defendants are hereby notified that they are required to appear, demur, plead, or answer thereto in the clerk's office of the United States circuit court on or before the first Monday of April, 1878, otherwise the bill may be taken *pro confesso.*

(Signed) F. B. VINOT, *D'y Cl'k.*

Marshal's Return.

Received, March 26th, 1878, by the U. S. marshal, and on the 27th March, 1878, served a copy of the within subpœna in chancery on Mrs. E. J. Holbrook and George Nicholson, within named, by handing the same to them in person, in the city of New Orleans.

(Signed) W. G. ELLIOTT, *D'y Marshal.*

Demurrer. Filed March 27th, 1878.

E. C. HANCOCK *vs.* E. J. HOLBROOK *et al.* } No. 8320.

The demurrer of Eliza Jane Holbrook and of George Nicholson, defendants, to the amended bill of complaint of Edward C. Hancock, the above-named plaintiff.

104 These defendants, by protestation, not confessing all or any of the matters or things in the plaintiff's amended bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, do demur to said amended bill, and for cause of demurrer show that the plaintiff hath not in and by his said amended bill made or stated such a case as entitles him in a court of equity to any discovery from these defendants, or either of them, or to any relief against them, or either of

them, as to the matters contained in the said amended bill or to any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, these defendants do demur thereto and humbly demand the judgment of this court, whether they shall be compelled to make any further or other answer to the said amended bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Signed) ROBERT MOTT,
105 (Signed) THOS. J. SEMMES, *Sol's.*

Personally appeared, George Nicholson and Mrs. E. J. Holbrook, who being sworn, deposes and say, that the foregoing demurrer is not interposed for delay.

(Signed) GEO. NICHOLSON.
(Signed) ELIZA J. HOLBROOK.

Sworn to and subscribed before me, this 26th day of March, 1878.
(Signed) R. C. MOTT, *Not. Pub.*

In my opinion the foregoing demurrer is well founded on point of law.

(Signed) ROBERT MOTT,
Of Counsel.

Motion and Order. Demurrer Fixed.

Extract from the Minutes of March 27th, 1878.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320.

On motion of Robert Mott, solicitor for Mrs. Eliza J. Hol-
106 brook, and Geo. Nicholson—

Ordered that the demurrer to the supplemental and amended bill herein be set down for argument on Tuesday, 2d April, 1878, at 11 a. m., and that complainant be notified.

Entry in Chancery Order Book.

MARCH 27th, 1878.

E. C. HANCOCK *vs.* Mrs. E. J. HOLBROOK *et al.*

The defendants, Eliza Jane Holbrook and Geo. Nicholson, have this day, by their solicitors, filed their demurrer to the amended bill of complaint of the complainant.

Motion and Order. Def'ts Objection Fixed.

Extract from Minutes, March 29th, 1878.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320.

On motion of Henry C. Dibble, solicitor for plaintiff—
It is ordered that this cause be set down for argument under rule

52, upon defendant's objection, for want of parties, on Tues-
107 day, April 2d, 1878, at 11 o'clock a. m., and that said defendants be notified.

Order. Demurrer Overruled.

Extract from Minutes of April 2d, 1878.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320.

The demurrer herein was called for trial.

H. C. Dibble and Robert Mott.

And after hearing argument, it is ordered that the said demurrer be overruled. And the matter of the accounting having been brought up. After hearing counsel, the court deferred its action thereon until after a hearing of the cause on its merits.

Order. Objection Stand Over.

Extract from the Minutes of April 2d, 1878.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320.

The defendant's objection for want of parties was called up for trial.

108 And after hearing H. C. Dibble and Robert Mott, it appearing that H. C. Warmoth and Joseph Hernandez are not necessary parties to the suit, ordered that the objections stand over until the hearing of the cause.

Answer of Ritchie W. Holbrook and Richard Fitzgerald. Filed May 3d, 1878.

In the Circuit Court of the U. S., District of Louisiana.

EDWARD C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als* } No. 8320.

The answer of Ritchie W. Holbrook and Richard Fitzgerald, two of the defendants, to the bill of complaint of Edward C. Hancock.

These defendants reserving all exceptions to the errors and uncertainties in plaintiff's bill contained, for answer thereto to so much thereof as they are advised it is material for them to make answer to, say:

That these respondents know nothing of the matters and things charged in said bill of complaint previous to the 18th De-
109 cember, 1874, when they were appointed commissioners to liquidate the affairs of the New Orleans Picayune Printing Company.

Respondents deny that they ever were a party to any fraud, combination, or conspiracy to injure or defraud the plaintiff or any stockholder of said company, and they further deny the averments and allegations in the plaintiffs said bill of complaint, tending in any way to charge respondent with any wrongful act.

Respondents, further answering, say that they were stockholders in the said Picayune Printing Company, on the 18th Dec'r, 1874, and voted for a dissolution of said company because it was right and proper that said dissolution should take place, and they were aware of the fact that the owners of ninety-four of the shares of stock were in favor of said dissolution, and either voted for or approved the same.

And these respondents, further answering, say that they deny all interest in the subject matter of plaintiff's suit, and plead
110 that the proper parties are not before the court, and that H. C. Warmoth, Joseph Hernandez, and all the stockholders of the Herald Company should be made parties hereto, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) ROBERT MOTT, *Sol.*

Ritchie W. Holbrook and Richard Fitzgerald, being severally sworn, say that the facts and averments set forth in the foregoing answer are true.

(Signed) R. W. HOLBROOK.
" RICHARD FITZGERALD.

Sworn to and subscribed before me, at this city of New Orleans, Louisiana, on this 3d day of May, 1878.

[SEAL.] (Signed) R. C. MOTT,
Notary Public.

Answer of Mrs. E. J. Holbrook and George Nicholson to Amended Bill. Filed May 3d, 1878.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320.

111 The answer of Eliza Jane Holbrook and George Nicholson to the amended and supplemental bill of complaint of Edward C. Hancock.

These defendants, reserving all exceptions and uncertainties in plaintiff's amended and supplemental bill contained, for answer thereto, or so much thereof as they are advised it is material for them to make answer unto, say:

1st. That they deny that the said New Orleans Picayune Newspaper and Printing Establishment made large earnings therewith, as charged in said amended and supplemental bill of complaint, or that said concern made or earned any money beyond the expenses thereof, and that, on the contrary, the said concern lost money

which was paid by the late A. M. Holbrook out of his individual resources and means.

That they deny that the whole debt to Charles T. Howard has been paid; that there still remains due to him a large sum for type and material furnished to A. M. Holbrook, for the security
112 of which the Picayune establishment was pledged to him, and which material and type were absolutely necessary for the uses and purposes of said newspaper and printing establishment, and the same could not have been maintained without the same.

And respondents, further answering, deny that the said plaintiff is entitled to any portion of said establishment, or to the profits thereof.

Wherefore respondents pray that all the claims of the plaintiff be rejected, and that they be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) ROBERT MOTT, *Sol.*

George Nicholson, being sworn, says that the facts and averments set forth in the foregoing answer are true.

(Signed) GEO. NICHOLSON.

Sworn to and subscribed before me, this 3d day of May, 1878.

[SEAL.] (Signed) R. C. MOTT,
Notary Public.

113 Mrs. E. J. Holbrook, being sworn, says that the facts and averments set forth in the foregoing answer are true.

(Signed) MRS. E. J. HOLBROOK.

Sworn to and subscribed before me, this 3d day of May, 1878.

[SEAL.] (Signed) R. C. MOTT, *Not. Pub.*

Entry in Chancery Order Book.

MAY 3D, 1878.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

Ritchie W. Holbrook and Richard Fitzgerald, two of the defendants to the bill of complaint of Edward C. Hancock, have this day, by their solicitor, Rob't Mott, filed their answer to the said bill of complaint.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

Eliza Jane Holbrook and George Nicholson, defendants to the amended and supplemental bill of complaint of Edward C. Hancock, have this day filed their answer to the said complainant's bill.

114 *Agreement. Filed May 7th*, 1878.

EDWARD C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

It is agreed that the agreement filed March 26th, 1878, under which the period of delay for taking testimony was to commence ten days thereafter, be now abrogated, to the end that such delay shall commence from and after the plaintiff files his replication.

N. O., May 7th, 1877.

(Signed) HENRY C. DIBBLE.
" ROBERT MOTT.

Replication. Filed May 7th, 1878.

To the Circuit Court of the United States for the District of Louisiana.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

The replication of Edward C. Hancock, pl'ff, to the answers of Mrs. Eliza Jane Holbrook, R. W. Holbrook, R. Fitzgerald,
115 and George Nicholson, def'ts.

This repliant, saving and reserving to himself all advantage of exception to the many insufficiencies of their said answers, for replication thereunto, saith:

That he will aver and prove his said bill to be true, certain, and sufficient in the [—] to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this hon. court shall direct, and humbly prays as in and by his said bill hath already prayed.

(Signed) EDWARD C. HANCOCK.
By HENRY C. DIBBLE,
His Solicitor.

116 *Entry in Chancery Order Book.*

MAY 7TH, 1881.

EDWARD C. HANCOCK *vs.* Mrs. E. J. HOLBROOK *et als.*

The complainant, by his solicitor, Henry C. Dibble, has this day filed his replication to the answers of Mrs. Eliza Jane Holbrook and others, defendants herein.

117 *Motion and Order Appointing F. A. Woolfley, Examiner. Entered and Filed June 20th*, 1878.

U. S. C. C., 5th C., Dist. La.

EDWARD C. HANCOCK.
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320. In Equity.

On motion of Henry C. Dibble, solicitor for plaintiff, it is ordered that F. A. Woolfley, Esq., be appointed examiner herein, and that plaintiff have leave to take the examination of his witnesses orally before said examiner.

Agreement to Extend Time for Taking Testimony, &c. Filed November, 22d, 1878.

U. S. C. C., Dist. of La.

EDWARD C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320. In Equity.

N. O., *June 22d*, 1878.

Mr. GEORGE NICHOLSON and Mrs. E. J. HOLBROOK:

Please take notice that plaintiff will proceed at once to
118 take the oral examination of witnesses before F. A. Woolfley, Esq., appointed examiner herein.

Respectfully,

(Signed) HENRY C. DIBBLE,
Solicitors for Pl'ff.

It is agreed that the taking of testimony of this case be postponed until 3d Monday of Nov., 1878.

(Signed) ROBERT MOTT *for Def't.*

It is agreed that the time for taking testimony be further extended until the the second (2d) Monday of December.

N. O., Nov. 18th, '78.

(Signed) HENRY C. DIBBLE,
Solicitor for Pl'ff.

(Signed) ROBERT MOTT,
For Holbrook and others.

It is further agreed that witnesses may be summoned by either party without further preliminary notice.

N. O., Nov. 18, 1878.

(Signed) HENRY C. DIBBLE,
Solicitor for Pl'ff.

ROBERT MOTT,
119 *For Def'ts Holbrook and others.*

Agreement for Commission. Filed December 7th, 1878.

U. S. Circuit Court, Dist. of La.

EDWARD C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320. In Equity.

It is agreed that W. D. Hennen, Esq., or any U. S. commissioner in the city of New York, shall be appointed examiner to take the answers of Edward C. Hancock upon the interrogatories and cross-interrogatories to accompany commission to be issued.

(Signed) HENRY C. DIBBLE,
Solicitor for Pl'ff.
ROBERT MOTT.

Agreement Extending Time, &c. Filed December 7th, 1878.

U. S. Circuit Court, Dist. of La.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK. } No. 8320.

It is agreed that the time for taking testimony in this case
120 be extended to the first Monday in January, 1879.

(Signed) HENRY C. DIBBLE,
Solicitor for Pl'ff.

(Signed) ROBERT MOTT,
For Def't Holbrook et al.

Return to Commission.

Received and filed December 26th, 1878, and opened by consent of parties on file January 18th, 1879.

Interrogatories.

Interrogatories to be propounded to Edward C. Hancock, now residing in the city of New York, State of New York, in a certain cause pending in the circuit court of the United States for the district of Louisiana, in chancery, wherein said Edward C. Hancock is plaintiff and Mrs. E. J. Holbrook *et als.* are defendants, the answers to said interrogatories to be read in evidence on the trial of said cause on behalf of said plaintiff.

First interrogatory. State your name, age, and present
121 place of residence and occupation. Are you a practical newspaper man?

Second interrogatory. Were you, in the year 1873, connected with a certain newspaper in the city of New Orleans, known as the New Orleans Herald? If you answer yea, state in what capacity you were connected with it, when and how your connection commenced, and how it ceased.

Third interrogatory. How much money, if any, did you invest in the said Herald newspaper; in what manner did you invest?

Fourth interrogatory. What was the success of the said Herald newspaper; was it insolvent when its publication ceased; what became of the advertising patronage and good will of the Herald; was it, or was it not, transferred to the New Orleans Picayune?

Fifth interrogatory. State all of the facts, within your own
122 knowledge, attending the winding up of the New Orleans Herald newspaper, and the transfer of the business to the New Orleans Picayune.

Sixth interrogatory. Is it true, or not, that H. C. Warmoth was one of the owners of the Herald, as stated in the defendants' answer? How much money did Warmoth advance to the paper, if any?

Seventh interrogatory. Is it true, or not, as stated in defendants' answer, that the Herald advocated the political views of Warmoth; was the paper published in his interest; had he any control in the paper?

Eighth interrogatory. Is it true, or not, as set forth in defendants' answer, that you had any knowledge of, or gave your consent or assent to any transaction by which certain stock of the Herald Company was transferred to A. M. Holbrook for a consideration of five thousand dollars, represented by notes of said Holbrook,
123 afterwards paid to Warmoth; when did you first hear of such a transaction; was such a transaction ever authorized or sanctioned by the Herald Company, of which you were secretary?

Ninth interrogatory. State your connection with the Picayune, under the management of Mr. A. M. Holbrook; what was to be your position on the paper; what was your position, and how long did you remain; why did you leave the paper; did you refuse or neglect to perform any duty incumbent on you as a member of the editorial staff?

Tenth interrogatory. After your connection was formed with the Picayune, did you ever at any time, or in any way, have any connection with the Herald Company, or the material of the Herald; did you at any time, or in any way, advise, assist, or countenance the publication of a daily paper called the Bulletin, printed with the material of the Herald; had you any connection, direct or indirect, with that paper; did you do anything to injure the Picayune; as
124 a newspaper man, did you assist or write for any other paper in New Orleans?

Eleventh interrogatory. If you did not attend the meetings of the board of directors of the Picayune Company, state why you did not; how often were you consulted by Mr. Holbrook with regard to the conduct and management of the paper; was Mr. Holbrook competent to edit a newspaper?

Twelfth interrogatory. If you state that you were excluded from participation in the management and control of the Picayune by Mr. Holbrook, aided by R. W. Holbrook and Peter St. Armand, as set forth in your bill of complaint, state, if you protested against such exclusion; did you consent to or approve Mr. Holbrook's course?

Thirteenth interrogatory. How many shares of the New Orleans Picayune Printing Company do you own?

125 Fourteenth interrogatory. As a practical newspaperman, state what you think the Picayune was worth in December, 1874? What do you consider it worth now?

(Signed) HENRY C. DIBBLE,
Solicitor for Plaintiff.

Cross interrogatories

E. C. HANCOCK *vs.* Mrs. E. J. HOLBROOK *et al.*) No. 8320 on the docket of the United States circuit court for the district of Louisiana.

The defendants, reserving all exceptions and objections to the interrogatories served on them in this, addressed to E. C. Hancock, because the same are leading, informal, and illegal, propound the following cross-interrogatories:

1st X. If you state in answer to the first interrogatory in chief that you are a practical newspaper man, please state what that means.

2d X. If, in answer to the second interrogatory in chief, you say you were in 1873 connected with the New Orleans Herald

126 newspaper in any capacity, state whether you were not one of the stockholders of that company; state when you first became a stockholder, and for how many shares you were a stockholder; how you paid for your said shares of stock; whether in money, property, or services. State whether the number of shares of the capital stock of said company assigned to you or transferred on the books of the company was not afterwards increased, and, if so, to how many shares. Did there not stand in your name as a stockholder of said company first nine or ten shares, and afterwards thirty or more shares of the stock of said company? What did you pay for the first nine or ten shares you held, and what did you pay for the other thirty or more shares you held of said stock?

3d X. Were not thirty or more shares of the capital stock of said Herald Company transferred or assigned to you, and were not at the same time thirty or more shares of said stock assigned or transferred to Alexander Walker? Was not said Walker

127 the president of said company, and were not you the secretary and treasurer thereof, or secretary thereof? What was the whole number of shares of the stock of said Herald Company, and who were the stockholders?—give the name and number of shares of each.

4th X. Were not sixty-five or some large number of shares of said stock unsubscribed for, and were not the only stockholders, besides yourself and Alexander Walker, Joseph Hernandez, four shares; H. C. Warmoth, four shares; H. S. McComb, four shares; Thomas Barnes, two shares; David Bidwell, two shares; and the following persons one share each, viz., H. L. Swords, D. B. Penn, Effingham Lawrence, Cyrus Bussy, J. C. Sinnott, F. H. Hatch, Lovell & Bailey, Pritchard & Bickham, W. F. Bell, Albert Shultz,

W. P. Harper, Wm. Mehle, Chris. Mehle, and Joseph Donaldson, and the Tow-Boat Association six shares, afterwards assigned to E. C. Hancock?

5th X. Do you not know that a certificate for sixty-five
128 shares of said Herald Company stock was made out and issued to or in the name of A. M. Holbrook, signed by you, as secretary, and Alexander Walker, as president, and has not part of those sixty-five shares of stock stood in your name on the stock-book of said company, and did not you assign the same to H. C. Warmoth, or in blank, and give the blank certificate to H. C. Warmoth, or some other person, to be used by him?

6th X. Did you not know, when you signed the charter of the New Orleans Picayune Printing Company, that sixty-five shares of the stock of the Herald Company had been assigned to A. M. Holbrook, or that he held a certificate for the same? How could he be the possessor of those shares if they had not been assigned to him with your knowledge and consent? Had not those shares, or a great part of them, stood in your name and in the name of Alexander Walker on the books of the Herald Company?

129 7th X. Were not all the corporators of the Herald Company to be corporators of the Picayune Company, with the exception of Warmoth, whose shares were put in the name of Hernandez?

8th X. Did not H. D. McComb decline to have stock in the Picayune Company?

9th X. How much money did the Herald Company owe at the time it ceased to publish its newspaper?

10th X. How many judgments were obtained against said company, after the Herald newspaper was suspended or ceased to be published? Give a list of them, and state how many of those judgments you paid out of your own money, or the money furnished by others, at your instance or solicitation. Were not those judgments obtained for debts of the Herald Company, and are not the amounts thereof still due to you or others who paid the same, and are not some still unpaid?

11th X. If you say that the advertising patronage and the
130 good will of the Herald Company was transferred to the New Orleans Picayune, state whether the Picayune was not thus called to fulfill, the contracts of the Herald, for which the Herald had been already paid, and explain what was the advantage of the said transfer to the Picayune.

12th X. How much money did the Herald Company borrow of H. C. Warmoth?

13th X. How much money did you and Alexander Walker, one or both of you, borrow of H. C. Warmoth for the use or benefit of said Herald Company?

14th X. Did not said Warmoth agree to loan to or to procure for the said Herald Company a large sum of money, say, over ten thousand dollars, and was not that money intended to maintain the Herald?

15th X. If you say the Herald Company was not insolvent, state

why its debts were not paid, and why the property was seized and sold by the sheriff to satisfy judgments against it, and why
131 executions against it were returned "no property found," and why you paid judgments against it to prevent sales being made by the sheriff to satisfy them?

16th X. Are there not now judgments against the Herald Company unsatisfied?

17th X. Why was a majority of the stock of the Herald Company assigned to A. M. Holbrook?

18th X. Why was a majority of the stock of the New Orleans Picayane Printing Company in the name of A. M. Holbrook; was that not done to give him the control of that company; did you object to the same being put in his name; if so, how, when?

19th X. Did you object to one share of said stock being put in the name of Peter St. Armand, and another share in the name of R. W. Holbrook; if so, how did you object; was not this done that A. M. Holbrook and his friends should have the control of the board of directors of said Picayune Printing Company; if not, why was it so done?

20th X. If you state that the shares of stock of said Pica-
132 yune Printing Company were worth two hundred and fifty dollars per share, or any other amount, state how you arrive at that estimation?

21st X. Did not the whole Picayune Newspaper and Printing Establishment sell in December, 1873, for twenty thousand dollars, on twelve months' credit; what additional value was given to that property by the formation of the New Orleans Printing Company; how many additional subscribers did the Picayune get by the conjunction with the Herald; how much money did the Picayune concern get from the patronage and advertising from the Herald? State the same exactly and precisely?

22d X. Was it not through the arrangement and assistance of H. C. Warmoth that the Herald Company was enabled to purchase the Picayune establishment on or about the 19th December, 1873; did not Warmoth furnish Hernandez as the security on the twelve months' bond given for the price; could the Herald, or the
133 directory thereof, have furnished good and solvent security for twenty thousand dollars at that time, and for that purpose, other than that furnished, and if they could, who could they have furnished?

23d X. Could the Herald Company, or its directory, at any time have furnished the money to pay the twenty thousand dollars' bond given for the Picayune?

24th X. Did not you and Alexander Walker, one or both of you, try to raise the money to pay said bond at maturity, and fail to do so?

25th X. Did not Hernandez or Warmoth offer you the property for which said bond was given, if you would pay or secure the same; was not time asked by J. Aroni, Esq., as your attorney, to raise the money; was not time accorded for that purpose, and was not your inability to procure the means therefor declared by said

Aroni before the sale was made by Hernandez to Holbrook in December, 1874?

26th X. What did you pay for the six shares of Herald
134 stock transferred to you by the Tow-Boat Association or Company?

27th X. What did you pay in money or property for the six shares of Picayune Company stock derived by you from D. B. Penn and others, which make up the twenty-one shares of said stock you claim to own in said company, acquired since December, 1874?

28th X. When the Picayune Company undertook to publish the Picayune newspaper in 1874, did the concern have any money with which to pay the expenses thereof; did you furnish any money or credit for the purpose of starting and keeping said concern going; what were the expenses per week of a concern like the Picayune newspaper establishment; what were the expenses per week of the Herald establishment?

29th X. How many meetings of the directors of the New Orleans Picayune Printing Company did you attend; were you not notified to attend all the meetings thereof, or most of them, when you were in New Orleans, and did you not intentionally
135 abstain from attending the meetings of said directors?

30th X. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer?

(Signed) ROBERT MOTT,
For Def't Holbrook and al.

Commission.

Circuit Court of the United States for the Fifth Judicial Circuit, holding sessions in and for the District of Louisiana.

To W. D. Hennen, or any U. S. commissioner in the city of New York:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Edward C. Hancock, and him duly examine on the annexed interrogatories on oath, touch-
136 ing and concerning certain matters and things in a case now depending in the said court, wherein Edward C. Hancock is plaintiff and Mrs. E. J. Holbrook *et al.* are defendants; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans,

this 7th day of December, anno Domini 1878, and the 103d year of the Independence of the United States of America.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

EDWARD C. HANCOCK *vs.* Mrs. E. J. HOLBROOK *et al.* } No. 8320 on the docket of the United States Circuit Court for the Dist. of La.

137 Deposition of witness produced, sworn, and examined, on the day hereinafter stated, at the office of the undersigned commissioner, No. 51 New street, in the city, county, and State of New York, under and by virtue of the annexed commission issued out of the circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana, to take the deposition of Edward C. Hancock in a certain cause pending and at issue between Edward C. Hancock, plaintiff, and Mrs. E. J. Holbrook *et al.*, defendants, in said court.

EDWARD C. HANCOCK, who being first duly sworn on the Holy Bible on this 20th day of December, in the year of our Lord 1878, doth depose and say as follows:

To the first interrogatory witness answers and says:

138 My name is Edward C. Hancock; I am now residing in the city of New York; I am forty-seven years of age, and am a practical newspaper man.

To the second interrogatory he answers and says:

I was, in the year 1873, connected with a certain newspaper in the city of New Orleans, known as the New Orleans Herald; Judge Alexander Walker, of New Orleans, and myself established that paper and commenced its publication on the 12th day of May, 1873; some time prior to that date we had jointly purchased the property and printing material necessary to start a daily newspaper, and paid in cash for such property and material the sum of $4,000; the whole amount which we personally expended in getting out the paper was about $5,000, which expense was equally divided between us; I continued upon that paper in the capacity of managing editor, and as the secretary of the New Orleans Herald Printing Company organized at the time the paper was first issued; my

139 connection with the paper ceased when it was consolidated with the New Orleans Picayune, about the 19th day of December, 1873.

To the third interrogatory he answers and says:

See answer to second interrogatory-in-chief.

To the fourth interrogatory he answers and says:

Afterwards the said newspaper was published so successfully, that a short time before its consolidation it completed arrangements to publish a morning edition and enlarged its field of usefulness and enterprise. At the time of the consolidation its assets were in excess of its liabilities, it had a good advertising patronage, very fair subscription list, and good daily sales. It was moreover popular with the people in town and was edited by a very capable

staff, and during its short career had already driven a leading paper, the Picayune, from the field—practically from the field and subsequently purchasing it. At the time of the consolidation, the circumstances of which will be hereafter set forth the patronage
140 and good will of the Herald were transferred to the Picayune.

To the fifth interrogatory he answer and says:

The New Orleans Picayune was one of the oldest and most influential journal in the South. It had been founded and conducted for many years by practical newspaper men, and had had great success. But two years prior to the establishment of the New Orleans Herald, the Picayune had been sold to a company of gentlemen who had associated themselves together for the purpose of conducting the paper. Mr. Holbrook, former proprietor, had realized at that sale $100,000, but under the management of these gentlemen the paper rapidly ran down because they were inexperienced men. The establishment of the Herald newspaper, which was conducted by practical newspaper men, and was a strong political organ in the same line with the Picayune, further depreciated the value
141 of the Picayune and it ultimately failed, so that it was sold at sheriff's sale. It occurred to the board of directors of the Herald Company that it might be to the advantage of the company to acquire this old paper, and accordingly, by resolution of the board, the Picayune Newspaper and Printing Establishment, with its assets and good will, were purchased by the New Orleans Herald Printing Company through Alexander Walker, its president, for the sum of $20,000 upon 12 months' credit. This was an extraordinarily low price, and the Herald Company acquired that property, which was worth to them fully $60,000 in my judgment. But sometime previous to this purchase, which occurred on or about the 19th December, 1873, the directors of the Herald Company had determined to change the Herald, which was then an evening paper, into a morning paper; but such change necessarily required a considerable additional outlay of capital, and negotiations had been in progress between the directors of the Herald Company and
142 H. C. Warmoth, then of New Orleans, who was a man of means, for the advance of the amount that would be required. He agreed, upon the terms which I will detail, to advance as much as $25,000 in such amount as might be required. Soon after these negotiations the purchase of the Picayune was made, and Warmoth agreed to secure the necessary surety on a twelve months' bond, the law requiring that some person in the board should purchase and sign such bond. Warmoth produced a surety, Mr. Joseph Hernandez, who was also a man of wealth; but who, as I understood, was secured by Warmoth, who deposited with him (Hernandez) collaterals to the value of the bond upon which Hernandez became surety.

The Herald Printing Company immediately entered into possession of the New Orleans Picayune Newspaper Establishment, and proceeded to conduct and to administer the same with marked and immediate success. The subscription list, advertising patron-
143 age, and good-will of the Herald were transferred to the

Picayune, and the editorial staff of the Herald Company proceeded to edit the new paper. The building in which the Picayune was printed, which had been its location for many years, was then the property of Alva M. Holbrook, former proprietor of the Picayune. A few days after the Herald Company purchased the Picayune propositions were made to the officers and directors of the Herald Company, owner of the Picayune, by Henry C. Warmoth, acting, as he stated, in behalf of Mr. Holbrook, and also in behalf of Mr. Hernandez, to secure the co-operation and assistance of Mr. Holbrook in the publication of the Picayune.

It was proposed to establish a new corporation which should absorb the Herald Company, and that Mr. Holbrook should have sixty-five shares of the hundred and twenty shares of the new stock, and that in consideration of this controlling interest in the new company, he, Holbrook, should personally assume the pay-
144 ment of the twelve months' bond which had been given by the Herald Company for the purchase of the Picayune, and he should at the same time deposit with Joseph Hernandez, the surety on the bond, his own collaterals to protect Hernandez, in lieu of this deposit with Hernandez by Warmoth, thus to relieve Warmoth of his responsibility in the premises, and secure the payment of the bond at its maturity. As a part of this transaction, and simultaneously with it, it was agreed between Warmoth, Holbrook, and Walker, the president of the company, that the Picayune property should first be formerly sold to Holbrook by the Herald Company, which sale was made *pro forma*, and entered upon the minutes of the Herald Company's books. This agreement is in writing, and I presume will be in evidence. I was not personally acquainted with these preliminary negotiations, but upon their conclusion
145 the charter of the New Orleans Picayune Printing Company which had been drawn in conformity, as I learned, with these negotiations and agreements, was prepared for signature, and I signed the same with the further understanding and agreement between Mr. Holbrook, Judge Walker, and myself, that the Picayune should be managed, published, and edited, in this way: Mr. Holbrook, who had a large experience in the business management of newspapers, was to be the business manager of the paper; Judge Walker was to be the chief of the editorial staff; and I was to be managing editor of the paper. I would not have signed the charter nor consented to the transfer but for this agreement. All of the actual shareholders in the Herald Company, or their assigns, became stockholders in the new Picayune Company to an amount corresponding to their shares in the Herald Company.

There were thirty-six shares besides those held by Judge Walker and myself, but I had become the assignee of six additional
146 shares. Judge Walker held ten, and I with those additional shares held fifteen. I have not the charter before me, and am speaking from recollection and may possibly be mistaken; however, the matter is of record. The sixty-five shares assigned to Mr. Holbrook in the new charter were given to him in consideration, as I have stated, of the assumption by him of the $20,000 bond.

The fifty-five additional shares represented to the former stockholders of the Herald Company, the consideration for the Herald's good will, advertising patronage, and subscription list, transferred to the Picayune, together with the valuable advantage which they had obtained as a company, by the purchase of so valuable a newspaper as the Picayune, at such an extraordinary low price.

To the sixth interrogatory he answers and says:

Governor Warmouth was not one of the owners of the Herald. He was in no way connected with it officially; he was one
147 of the subscribers to its stock for two shares, and I believe he had become the assignee, or subsequently became the assignee, of two additional shares. Beyond this he had no other connection with the paper than the business transaction to which I have referred. Under that agreement Warmouth had advanced to the paper at the time the Picayune was purchased, about $1,600, not more.

To the seventh interrogatory he answers and says:

The Herald always opposed the principles and party of which Governor Warmouth was the representative. It in no way ever supported him, either personally or politically, as reference to its files will show, which are in existence. The paper was in no sense published in his interest, and he had no control in the business or editorial management thereof. Governor Warmouth was a personal friend of the editors of the Herald, and there was no personal antagonism to him but intense political.

148 To the eighth interrogatory he answers and says:

I knew nothing of any transaction or agreement between A. M. Holbrook and the New Orleans Herald Printing Company, or between Holbrook and myself, except the contract which was witnessed by the charter of the New Orleans Picayune Printing Company, and the additional agreement with regard to the future publication of the Picayune, which I have detailed. The only transactions of which I had any personal knowledge, between the several parties referred to, were those that I have set forth. At the time of the signing of the charter of the Picayune Company I had no knowledge of the transfer of sixty-five shares of the stock of the Herald Company to A. M. Holbrook in consideration of $5,000, representated by notes of said Holbrook, afterwards paid to Warmouth. I never even heard of this transaction until some time subsequent to the organization of the Picayune Printing Company. I never
149 consented to any such transaction or any such transfer, and no such transaction, no such transfer, and no such issuance of stock was ever authorized at any time or in any manner by the board of directors of the Herald Company, of which I was at that time secretary. The books of the company were in my possession. With regard to the consideration of $5,000, represented by two notes, said to have been given Warmouth by Holbrook, I knew nothing in regard to the existence of the same for a very long time subsequent to the discovery of the issuance of stock.

To the ninth interrogatory he answers and says:

I was in the act of discharging my duties as managing editor of

the paper when the charter was signed and Mr. Holbrook came into the control of the business management. As I have stated I was to be the managing editor of the paper. As soon as Mr. Holbrook came into the establishment he immediately usurped
150 entire control of the paper, not only in business management but in the managing editor's department. The first board of directors was composed of Holbrook, St. Amand, R. W. Holbrook, Judge Walker, and myself. St. Amand and R. W. Holbrook, a brother of A. M. Holbrook, were the mere creatures of A. M. Holbrook. They were employees of his and having a control in the board of directors he immediately proceeded to violate the agreement under which Judge Walker and myself were to continue on the paper, as I have stated, and assumed to be practically the sole owner and manager of the Picayune. This usurpation culminated by the presentation to the board of directors, for their adoption at their first meeting, a series of by laws framed in flagrant violation of the agreement to which I have adverted. I protested against the adoption of these by-laws, and requested that my protest be noted in the minutes of the board, but they were adopted against my protest, and from that time I felt that I could
151 not attend any meeting of the board of directors, or assume any connection with the Picayune, without condoning a fraud and jeopardizing my own interest and those of other stockholders of the paper. I stood ready at any time to resume my post as managing editor, and I never refused to perform any duty in that line.

To the tenth interrogatory he answers and says:

After the formation of the Picayune Printing Company, and my connection with it, I never, at any time, or in any way, had any connection with the Herald Company, or with its material. I had been advised that the Herald Company was, in contemplation of law, absorbed by the Picayune Company, and that my interest in the Picayune Company would be jeopardized, should I have anything further to do with the Herald Company or its material. I never at any time, or in any way, advised, assisted, or countenanced the publication of a daily paper called the Bulletin, which was
152 printed, I understand, with the material formerly used for the publication of the Herald. I had no connection, directly or indirectly, as a director or otherwise, with the paper. I never contributed a line to its columns, nor give it aid or assistance in any manner. I did nothing after I left the Picayune office to injure that paper. I considered that I was a part owner of it, and certainly should not have attempted to destroy my own property and that of my own friends and associates, who had been with me in the Herald. As a newspaperman, I did nothing after leaving the Picayune to assist any other paper in New Orleans; I wrote for no other paper, and did not advise, or in any manner aid, any other published in the city.

To the eleventh interrogatory he answers and says:

I have explained why I did not attend the meetings of the board of directors of the Picayune Company. I was not consulted at

153 any time by Mr. Holbrook in the management and conduct of the paper. I considered that Mr. Holbrook was a competent business manager of a newspaper, but totally unfitted to control its editorial columns. He was exceedingly illiterate, and was never known to have written a line for the paper, except thanks for gratuitous bouquets; and he moreover, judging from his performance in that capacity, after the death of Lumsdan, Kenvell, and Wilson, who were all practical newspaper people, he, in a short time, succeeded in almost ruining the paper, and forced its sale to the New Orleans Picayune Printing and Publishing Company.

To the twelfth interrogatory witness answers and says:

I have stated in my answer to the ninth interrogatory in chief that I protested against the assumption on the part of Mr. Holbrook of the exclusive management and control of the Picayune. I never in any manner consented to or approved Mr. Holbrook's
154 course in the premises. I frequently reiterated my protest, and served a written protest more than once on Mr. Holbrook.

To the thirteenth interrogatory witness answers and says:

Twenty-one shares.

To the fourteenth interrogatory witness answers and says:

In my opinion, the Picayune was worth fully $60,000 in December, 1874, and it is certainly not worth less at this present time.

Cross-Interrogatories.

To the first cross-interrogatory witness answers and says:

A practical newspaper man is one who has practical experience in editing and publishing newspapers. I have been connected with newspapers some ten years of my life, and was five years managing editor of the New Orleans Times, during that period the most successful and profitable newspaper ever published in New Orleans up to the present time.

155 To the second cross-interrogatory witness answers and says:

I was one of the stockholders of the New Orleans Herald Printing Company. I became a stockholder when the paper was founded; I think that the shares I originally held were ten in number. At the formation of the company and the establishment of the paper, these shares were assigned to me in consideration of my transfer to the company of my interest in the material, which had been purchased by Judge Walker and myself, as set forth in my answers to the interrogatories in chief. I had paid enough of actual cash for this printing material to make my original ten shares cost me par value. Subsequently my stock was increased; I had a number of shares assigned to me by the board of directors in consideration of my services as one of the editors of the paper, for which I have not been paid a salary. Some thirty shares, although I am not certain of the exact amount, for I have not seen the books of the
156 Herald Company for several years. I refer to these books for correction if I am in error. I paid no actual cash for these

additional shares and received no benefit from them, as will be explained. The facts in connection with the matter are as follows: As I have stated in my answers to the interrogatories in chief, the board of directors of the Herald Company had concluded to issue a morning edition of the paper, the paper then being issued as evening paper: the evening edition was to be continued. This would incur a large increase of expense, and negotiations were commenced with Warmouth, as I have set forth. In connection with these negotiations it was proposed that a certain number of shares of the capital stock of the company should be placed in the hands of Warmouth to be used by him as collateral security to raise the amount of money that would be required for the issuance of the morning edition, and which he agreed to advance. I think the number
157 of shares placed with Warmouth in this way were eighty. The assignment of additional shares to myself and Walker by the board of directors in consideration of our services was merely preliminary to our placing these shares in the hands of Warmouth, to be used as I have stated, as collateral security to obtain the loan needed. Before this transaction was resolved upon by the board of directors my recollection is that the written consent of all of the actual stockholders of the company was obtained by me to the terms of this transaction.

To the third cross interrogatory witness answers and says:

I have detailed in my answer to the preceding interrogatory the circumstances attending the issuance of additional shares to Judge Walker and myself. Judge Walker was the president of the Herald Company, and I was the secretary thereof. I think the whole number of shares of the stock of the Herald Company was 120. I am not able to give the list of the stockholders, as I have not
158 the books in my possession. The matter is of record and can readily be ascertained.

To the fourth cross-interrogatory witness answers and says:

I am not able to give the exact number of the unsubscribed shares, and I am not able to give the list of the stockholders. I presume that the names set forth in this interrogatory are correct. I have no reason to suppose otherwise—the books will show.

To the fifth cross-interrogatory witness answers and says:

As I have stated in my answer to the interrogatories-in-chief, I did not know that the certificate for sixty-five shares of the Herald Company's stock had been issued to or placed in the name of A. M. Holbrook until some time subsequent to the establishment of the New Orleans Picayune Printing Company, and the transfer to it of the property of the Herald Company. After the additional shares were issued in the name of Judge Walker and myself,
159 as set forth above, we issued two certificates of stock, each for forty shares, to H. C. Warmouth. These latter certificates represented the additional shares issued to Judge Walker and myself, and the original shares held by us, all of which shares were transferred to him. This stock was placed in the hands of Warmouth under and by virtue of an agreement made between him and the board of directors of the Herald Company, whereby he, War-

mouth, agreed and bound himself to advance in cash to the Herald Company as needed to enable them to issue a morning addition, to the amount of $25,000, if necessary. It was well understood between the board of directors of the Herald and Warmouth that this stock should be held and used by him only as a collateral to secure him for such advances. But no authority was given to Warmouth by myself or by the board of directors of the Herald Company to transfer or dispose of this stock in any manner or of any
160 portion thereof. The stock was made transferable only upon the books of the company in the usual method, if I am not mistaken. Shortly after Warmouth came to me, as the secretary of the company, and to Walker, as the president, and stated that inasmuch as the certificates in his possession were in block, and as the sums required from time to time would be of small amount, it would materially assist him if he could use smaller denominations of stock as collaterals. He, therefore, asked that the stock-book be given into his possession, with three or four certificates signed in blank for this purpose. This was done. But it being understood that these shares should only be used in lieu of the other certificates, and only as collateral security to secure Warmouth for money to be advanced by him, or to obtain advances as money should be required for the use of the Herald Company in getting out the morning paper.

161 I had no knowledge of the issuance of sixty-five shares of stock on one of these blank certificates to A. M. Holbrook, until some time subsequent to the organization of the Picayune Company. I never consented to any such issuance of stock. No such stock was ever transferred on the books of the company, and no such issuance of stock to Holbrook was ever authorized at any time, or in any manner, at any meeting of the board of directors of the Herald Company, of which I was secretary. I only learned of this issuance when the stock-book was some time after returned to me, when I discovered from the stub which was filled up in the handwriting of Warmouth that he had issued one certificate for the amount of sixty-five shares to A. M. Holbrook. I considered this certificate as absolutely null and void, and the Herald Company never received any consideration for it.

To the sixth cross-interrogatory witness answers and says:

162 I did not know when I signed the charter of the New Orleans Picayune Company that sixty-five shares of stock of the Herald Company had been assigned to A. M. Holbrook; nor did I know that he held a certificate for that number of shares; he became possessor of these shares, as I have since learned, in the manner I have detailed in my answer to the fifth cross-interrogatory. The additional shares in the Herald Company over and above the shares originally held by Judge Walker and myself were transferred to us by the board of directors, as I have set forth; but it was but a momentary matter, and only for the purpose of enabling us to use such stock as collateral to secure advances for the money needed, as I have set forth.

To the seventh cross-interrogatory witness answers and says:

I understand that to be the arrangement.

To the eighth cross-interrogatory witness answers and says:

163 H. S. McComb did decline to accept stock in the Picayune Company, to which he was entitled by virtue of his being a stockholder in the Herald Company; he surrendered his right to stock in the Picayune Company to the company, and wrote me to that effect.

To the ninth cross-interrogatory witness answers and says:

I am not able to say how many judgments were obtained against the Herald Company after the Herald was suspended; I have not the records before me, but I think I paid all the judgments against the company; I paid these judgments in order to protect my interest in the Picayune; by legal advice I had been informed that the defendants in this case were pressing the suits and executions for the purpose of selling out my interest in the Picayune; I have not, and do not consider that I have a claim against the Herald Company, which I am advised ceased to exist; at the same time

164 I did not consider myself bound to meet these debts, but I paid them to avert any complications in this suit, and I know of no judgment unpaid.

To the eleventh cross-interrogatory witness answers and says:

The Picayune assumed the completion of the contracts of the Herald; some advertisements had been paid for, but many had not; the credits transferred at that time amounted to more than the debts of the Herald; it was my understanding at the time I signed the charter of the Picayune Company, that the Picayune Company, in consideration of the transfer of the Herald's credits to it, were to pay the debts of the Herald Company; but when Mr. Holbrook usurped control of the Picayune he repudiated the debts, while the Picayune availed itself of all the advantages resulting from the transfer of the advertising patronage and credits attending.

The subscription list of the New Orleans Herald was also

165 transferred to the Picayune. This was a considerable advantage; but the transfer of the good-will of the Herald, which was then a successful journal, was of greater advantage, and secured to the Picayune that success which immediately attended its new regime. This was manifested in increased advertising patronage and in increased circulation. It was known in the community that the experienced newspaper men, who had been publishing the Herald, had become the purchasers, and it was understood that they were to become the editors of the Picayune. The public were not acquainted with the circumstances of the usurpation of Mr. Holbrook, and while that usurpation was an injury to Judge Walker and myself, it did not check the success of the Picayune, resulting from the cessation of the publication of the Herald and the assumption of the publication of the Picayune by the gentlemen who had been printing the other paper.

166 I recollect that the day after the acquisition of the Picayune by the Herald Company, the advertising receipts were $1,800

To the twelfth cross-interrogatory witness answers and says:

Not more than $1,600.

To the thirteenth cross-interrogatory witness answers and says:

I borrowed no money of Warmouth for my own use or benefit, nor in my own name for the benefit of the Herald Company. The transaction with Warmouth was between him and the board of directors of the Herald Company.

To the fourteenth cross-interrogatory witness answers and says:

As I have heretofore set forth, Warmouth agreed to advance, or to obtain advances, for the Herald Company, to enable it to issue a morning paper, the sum of money to amount to $25,000, if necessary, and to be advanced in sums as required

To the fifteenth cross-interrogatory witness answers and says:

167 I have answered this interrogatory above, I understand, without knowing positively that the seizure of the printing material, with which the Herald had been published, was made upon a judgment obtained for rent to become due, under the laws of Louisiana. I had ceased to have any connection with the Herald Company, as I have stated; I resigned as secretary of the company as soon as I became a stockholder in the Picayune.

To the sixteenth cross-interrogatory witness answers and says:

I know of none.

To the seventeenth cross-interrogatory witness answers and says:

As I have already stated, I knew nothing, until long after the organization of the Picayune Company, of the assignment of a majority of the stock of the Herald Company to A. M. Holbrook; this was a transaction to which I was not a party; such stock was not assigned to Holbrook with my consent or knowledge;

168 it was not authorized by the board of directors of the Herald Company.

To the eighteenth cross-interrogatory witness answers and says:

A majority of the stock of the New Orleans Picayune Printing Company was put in the name of A. M. Holbrook at the time the charter was signed, in conformity with the agreement and understanding with which I have heretofore detailed, and which was witnessed by a written agreement, and entered upon the minute books of the Herald Company in connection with the transaction with A. M. Holbrook, who personally assumed the payment of the twenty thousand dollar bond, given for the purchase of the Picayune; and, in consideration of his depositing personal securities and collaterals with Hernandez to secure him against loss, as surety on that bond, I concurred in the transaction, by signing the charter of the Herald Company, and did not

169 therefore object to the same.

To the nineteenth cross-interrogatory witness answers and says:

I did not object to the placing of one share of the Picayune Company's stock in the name of Peter St. Armand, and one share in the name of R. W. Holbrook, because it was a part of the agreement with Holbrook, in consideration of his assuming the payment of the $20,000 bond, to have a controlling interest in the Picayune; and as he required that this controlling interest should be realized to him

immediately by giving him control in the board of directors established in the charter, and as it became necessary for him to have stock in the name of those named as directors in the charter, I made no objection to his assignment of these two shares; I did not know whether R. W. Holbrook and St. Armand purchased the stock or not, I only supposed that they had; at that time I had full confidence in Holbrook and supposed he would carry out
170 his agreement.

To the twentieth cross-interrogatory witness answers and says:

The value of the Picayune was fixed in the charter at $80,000, represented by 120 shares of $250 each. The paper had run down under the management of the preceding owners, and I considered by its acquisition by practical newspaper men, and its acquisition of the patronage and good will of the Herald, then a popular journal, that the value of the Picayune was doubled at once, and the shares were then worth $500 each. But on the surrender of the four shares of McComb to the company, and upon the forfeiture of the sixty five shares of Holbrook to the company by his failure to pay the consideration in meeting the $20,000 bond, the remaining fifty-one shares were each worth at least $1,176.47.

To the twenty-first cross interrogatory witness answers and says:

171 The Picayune Newspaper and Printing Establishment was sold in December, '73, for $20,000, on twelve months' credit. The Picayune had run down, and while a most valuable newspaper to practical newspaper men, it was not worth more than $20,000 except to a newspaper or to newspaper men; the gentlemen who were conducting the New Orleans Herald at that time were the only practical newspaper men who needed the Picayune establishment with its name or good will, and thus they bought it at the appraised value, and upon the most favorable terms known to the law.

I have already explained how the property enhanced in value upon its acquisition by the Herald, and the formation of the Picayune Printing Company, and the amalgamation of the two papers; I cannot tell how many additional subscribers the Picayune obtained after its conjunction with the Herald; I have not access to the books, but I know that the daily sales were immediately
172 largely increased; I cannot tell how much money the Picayune concern got from the patronage and advertising obtained from the Herald; but I know it was very considerable; I have no means or facilities for ascertaining these amounts correctly. I am satisfied that the value of the Picayune was very largely increased as the result of this amalgamation with the Herald.

To the twenty-second cross-interrogatory witness answers and says:

It was through the arrangement and assistance of H. C. Warmouth that the Herald company was enabled to purchase the Picayune establishment on or before the 19th of December, 1873; it might have been done without his assistance, but, as a matter of fact, he did make the arrangement.

I think Warmouth did furnish Hernandez as security on the twelve months' bond given for the price; I so understood it at the time. The Herald company did not try to obtain
173 any one else other than Hernandez as surety on the twelve months' bond, but I have no doubt that if Warmouth had not been ready to furnish Hernandez as surety the Herald Company could have found some other one to have signed the bond. No attempt was made to find any one else, as there was no necessity of trying. One does not look for an endorser when he has one.

To the twenty-third cross-interrogatory witness answers and says: The Herald Company could undoubtedly have furnished the money to pay the $20,000 bond given for the Picayune, but by the arrangement with Holbrook he became the payor of the bond. He assumed the possession of the Herald Company, and in consideration of the controlling interest in the Picayune Company he deposited, as I understand, collateral security with Joseph Hernandez, the surety on the bond, to secure him, Hernandez.

174 Under the laws of Louisiana, as I was advised, the surety on a bond had no recourse on the property. Had the Herald Company continued in the publication of the Picayune, I am satisfied that they could have easily paid the bond at maturity by the profits of the paper, as Mr. Holbrook subsequently did. After the acquisition of the Picayune establishment by the Herald Company, Mr. C. A. Weed, who had been formerly proprietor of the New Orleans Times, offered to advance a considerable sum of money if needed to assist the Herald Company in conducting the Picayune newspaper. I mention this fact to show that the gentlemen connected with the Herald Company were not dependent upon Mr. Warmouth and Mr. Hernandez in this matter.

To the twenty-fourth cross-interrogatory witness answers and says: If Judge Walker attempted to raise money to pay the bond at maturity, I know nothing about it. I certainly made no such
175 attempt. I did not consider I had any obligation, or that the Picayune was in any way legally obligated to meet the bond at maturity. I had ceased to be connected with the Herald Company. I had been advised and I considered that the company was merged in the new Picayune Company. I deem that the sixty-five shares of stock which gave Mr. Holbrook a controlling interest in the Picayune had released the Herald Company and the Picayune Company from all responsibility upon the bond.

To the twenty-fifth cross-interrogatory witness answers and says: Neither Hernandez or Warmouth ever made any offer to me of the property, for which the bond was given, if I would pay the bond or secure the same. Mr. Aroni never was my attorney in that matter; I never consulted him professionally in this or any other matter; I never had anything to do with Mr. Aroni in this matter. Time was not granted to me, nor offered to be granted
176 to me, to procure the means to meet the bond, nor did I make any effort to procure the means to meet the bond, nor did I intend to meet the bond, nor did I feel under any obligation

to meet the bond, and under no circumstances would I have contracted one dollar for payment of the bond, as I did not owe it.

To the twenty-sixth cross-interrogatory witness answers and says:

The six shares transferred to me by the Tow-Boat Association, or Company, were donated to me, but cost the Tow-Boat Company originally $1,500. During my continuance on the Herald I had received no salary as one of the editors. The gentlemen who had subscribed the stock of the Herald Company were all personal friends of Judge Walker and myself, and the gentlemen who controlled this Tow-Boat Company were my own personal friends, and, desiring to assist me in the matter, gave me the stock.

177 To the twenty seventh cross-interrogatory witness answers and says:

I bought one share from D. B. Penn for $50; one share from the estate of W. P. Harper for $100; the other shares mentioned in this interrogatory were donated to me by the holders who were my personal friends in the same way in which the shares of the Tow-Boat Company were given to me.

To the twenty-eighth cross-interrogatory witness answers and says:

From the moment the Picayune and the Herald were amalgamated, and the news company undertook to publish the Picayune, in my judgment the receipts were ample to meet the running expenses, and very little money accommodation was needed. The deposits of the daily receipts with any bank in the city was sufficient to give the company such credit as might be necessary for any small amount that might be needed at the end of the

178 week. As I have stated, there was the amount of $1,800 or its value received on one day during the short period that the Picayune was published by the Herald Company before the formation of the charter of the Picayune Company. I did not furnish any money or credit, nor was I asked to do so; nor do I think it was necessary. I think the running expenses of the Picayune at that time per week should have been from $2,800 to $3,500. The expenses of the Herald establishment, which was conducted on an economical basis, did not exceed $1,800 gross. Not having examined the books of the Picayune Company I cannot, of course, state correctly what the actual expenses were.

To the twenty-ninth cross-interrogatory witness answers and says:

I think I attended two meetings of the board of directors of the New Orleans Picayune Printing Company. I do not know whether

179 I was invited to attend all the meetings of the board or not. I abstained from attending the meetings after Mr. Holbrook usurped control and after I had made my protest. I did so intentionally and under legal advice. By the usurpation of Mr. Holbrook I was practically excluded from participating in the management of the concern, and I could not attend or give sanction to this usurpation by my presence when I was entitled to be managing editor of the paper.

To the thirtieth cross-interrogatory witness answers and says:

I know nothing else to state.

(Signed) EDW. C. HANCOCK.

Testimony of the witness taken by me and reduced to writing before me by a clerk employed by me *pro hac vice*, and by the witness subscribed and sworn to before me, this 20th day of December, 1878.

(Signed) WILLIAM D. HENNEN,
Commissioner, etc.

180 STATE OF NEW YORK, } ss:
City and County of New York, }

I, the undersigned William D. Hennen, residing in the city, county, and State of New York, and duly appointed and qualified commissioner in said State for the State of Louisiana, and named and appointed as special commissioner to take the testimony of Edward C. Hancock in a certain cause pended in the United States circuit court for the fifth judicial circuit, holding sessions in and for the district of Louisiana, in which said cause said Hancock is plaintiff and Mrs. E. J. Holbrook *et al.* are defendants, as appears from the annexed commission issued out of said court, and by virtue thereof do certify that I caused the said Hancock, to me personally known, being the witness hereinbefore named and examined, to appear before me at the time and place above named, and after publicly and solemnly swearing him on the Holy Bible to tell the truth, the whole truth, and
181 nothing but the truth, in answer to the annexed direct and cross-interrogatories, I then and there proceeded to examine him by propounding to him the said direct and cross-interrogatories, and by having reduced in my presence and that of the witness his answers thereto in type-writing, by the hand of a clerk or type-writer employed by me for this purpose—and being a party having no interest in said suit—except the last page, number 28, which is in my own handwriting, and contains the testimony of said witness therein reduced to writing by my own hand, and except further certain corrections and interlineations in the preceding pages, which are approved by my initials on the margin and opposite said corrections and interlineations; and I then caused said witness to carefully read over with me and in my presence his said testimony so reduced to such writing, and then to sign the same in my presence, which he did, as already
182 stated. The execution of said commission is contained in the preceding twenty-eight pages, exclusive of the commission itself, the interrogatories, cross and direct, and this certificate beginning on the 29th page.

In testimony whereof, I have hereunto set my hand and seal of office of commissioner for the State of Louisiana (adopted by me as my seal *pro hac vice*), on this 20th day of December, 1878, at my said office, No. 51 New street.

[SEAL.] (Signed) WILLIAM DAVISON HENNEN,
Commissioner appointed by the Court.

Agreement Extending Time for Taking Testimony. Filed January 18th, 1879.

U. S. Circuit Court, Dist. of La.

EDWARD C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320. Dist. of La.

It is agreed that the time for taking testimony shall be
183 extended until the first Monday in February, 1879, and that the clerk or his deputy may open the testimony of plaintiff which has been taken by commission, without publication or other formality.

(Signed) HENRY C. DIBBLE,
Solicitor for Pl'ff.
ROBERT MOTT,
Sol. for Def'ts, Holbrook and Nicholson.

Motion and Affidavit for Subpœna Duces Tecum to Jos. Hernandez. Entered and Filed March 12, 1879.

U. S. C. C., Dist. of La.

EDWARD C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320. In Equity.

On motion of Henry C. Dibble, solicitor for plaintiff, and considering the annexed affidavit—

It is ordered that a writ of *subpœna duces tecum* issue, commanding Joseph Hernandez to have and produce before F. A. Woolfley, Esq., U. S. commmissioner, appointed examiner herein,
184 on Thursday, the 13th inst., at 2 o'clock p. m., the following documents in his possession:

1st. A certain "twelve-months' bond" for $20,000, given by the New Orleans Herald Printing Company, Dec. 19th, 1873, for the purchase of the New Orleans Picayune Newspaper and Printing Establishment, sold in the suit of John Phelps *vs.* The New Orleans Printing and Publishing Co., No. 4979 of the docket of the 6th district court, to the New Orleans Herald Printing Company, and upon which said bond Joseph Hernandez was surety, and which said bond was paid by said Joseph Hernandez on or about the 18th Dec., 1874.

2d. The written assumption or agreement of the late A. M. Holbrook, whereby he bound himself to pay the said bond at maturity, and to secure the said Joseph Hernandez against loss as surety on said bond.

3d. The written transfer of the New Orleans Picayune
185 Newspaper and Printing Establishment from the N. O. Picayune Printing Co. to Joseph Hernandez, on or about Dec. 19, 1874.

Affidavit.

Henry C. Dibble, solicitor for plaintiff, being sworn, says, that plaintiff is absent from the State, and that the documents above described are necessary to make out plaintiff's case, and are supposed to be in the hands of Joseph Hernandez.

(Signed) HENRY C. DIBBLE.

Sworn and subscribed before me, this 12th day of March, 1879.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of La.

Subpœna Duces Tecum to Joseph Hernandez. Issued March 12th, 1879.

United States of America, Circuit Court of the United States for the Fifth Judical Circuit and District of Louisiana.

The President of the United States to Joseph Hernandez:

186 You are hereby commanded to be and appear, and to bring with you—

1st. A certain twelve months' bond for $20,000, given by the New Orleans Herald Printing Company, Dec. 19th, 1873, for the purchase of the New Orleans Picayune Newspaper and Printing Establishment, sold in the suit of John Phelps *vs.* N. O. Printing and Publishing Company, No. 4979 of the docket of the 6th district court, to the N. O. Herald Printing Co., and upon which said bond Joseph Hernandez was surety, and which said bond was paid by said Joseph Hernandez on or about the 18th Dec'r, 1874.

2d. The written assumption or agreement of the late A. M. Holbrook, whereby he bound himself to pay the said bond at maturity, and to secure the said Joseph Hernandez against loss as surety on said bond.

3d. The written transfer of the New Orleans Picayune Newspaper and Printing Establishment from the N. O. Picayune
187 Printing Co. to Joseph Hernandez, on or about Dec'r 19th, 1874, before F. A. Woolfley, comm'r, at the clerk's office of the circuit of the United States for the 5th circuit, in and for the said district, to be holden at the city of New Orleans, on Thursday, the 13th day of March, 1879; then and there to be used in evidence in a certain cause now pending therein, and to be tried between Hancock and Holbrook, at 2 o'clock p. m., and herein fail not, under penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 12th day of March, in the year of our Lord one thousand eight hundred and seventy-nine, and the 103d year of American Independence.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's Return.

188 Received, March 12th, 1879, by the U. S. marshal, and on March 13th, 1879, I served a copy of this subp. *duces tecum*

on the within Joseph Hernandez, by handing the same to him in person, at his office in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Motion and Affidavit for Subpœna Duces Tecum to Geo. Nicholson. Entered and Filed March 14th, 1879.

EDWARD C. HANCOCK, *vs.* Mrs. E. J. HOLBROOK *et als.* } No. 8320. U. S. C. C.

On motion of Henry C. Dibble, solicitor for plaintiff, and upon suggesting that it is necessary for the purpose of making out his case, that plaintiff should have over of the following books in the possession of the defendants, to wit:

189 1. The cash-book of the Picayune office from Dec. 19th, 1874, to date.
2. The day-book from said period.
3. The "blotter" of said office for that period.
4. The journal for that period.
5. The ledger for that period.
6. The cash-book for that period.

It is ordered that George Nicholson, one of the defendants, produce before F. A. Woolfley, Esq., U. S. commissioner, examiner herein, the above-specified books on Saturday, the 15th instant, at 2 o'clock p. m.

Affidavit.

Henry C. Dibble, being sworn, says that he is the solicitor for plaintiff; that plaintiff is absent from the State, and that it is necessary, in order to make out plaintiff's case, that plaintiff should have over of the books specified in the foregoing motion.

(Signed) HENRY C. DIBBLE.

Sworn to and subscribed before me, this 14th March, 1879.

(Signed) F. B. VINOT,
U. S. Comm'r.

190 *Subpœna Duces Tecum to George Nicholson. Issued March 14th, 1879.*

United States of America, Circuit Court of the United States for the Fifth Judicial Circuit and District of Louisiana.

The President of the United States to George Nicholson:

You are hereby commanded to be and appear, and to bring with you—

1st. The cash-book of the Picayune office from Dec'r 19th, 1874, to date.

2d. The day-book for said office.

3d. The blotter of said office for that period.
4th. The journal for that period.
5th. The ledger for that period.
6th. The cash-book for that period, before the circuit court of the United States for the fifth circuit, in and for the said district, to be holden at the city of New Orleans, on Saturday, the 15th day of March, 1879, then and there to be used in evidence in a cause
191 certain now pending therein, and to be tried between Hancock and Holbrook, at 2 o'clock p. m., and herein fail not, under penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the City of New Orleans, this 14th day of March, in the year of our Lord one thousand eight hundred and seventy-nine, and in the 103d year of American Independence.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Agreement to Extend Time for Taking Testimony. Filed March 15th, 1879.

U. S. C. C.

E. C. HANCOCK *vs.* Mrs. E. J. HOLBROOK *et al.*

It is agreed that the time for taking testimony in this case be extended until the first Monday of April, 1879.

N. Orleans, 15th March, 1879.

192 (Signed) HENRY C. DIBBLE,
Solicitor for Pl'ff.
ROBERT MOTT,
For Mrs. Holbrook et al.

Motion to Extend Time, &c. Entered and Filed June 2d, 1879.

In the United States Circuit Court for the District of Louisiana.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et al.* } No. 8320.

On motion of Robert Mott, of counsel for def'ts, and on suggesting that it has been impossible to take the testimony on part of the defendants, it is ordered that the time for taking testimony be extended until the first Monday of July, 1879.

Agreed to November 1st, 1879.

(Signed) HENRY C. DIBBLE,
Solicitor for Pl'ff.

Agreement to Extend Time for Taking of Testimony. Filed February 28th, 1880.

193 U. S. C. C., Dist. of La.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROCK *et al.* } No. 8320. In Equity.

It is agreed that the time for taking testimony in this case shall be extended until the 2d Monday of March, 1880, it being understood that the case shall then be closed and publication of testimony be made.

(Signed) HENRY C. DIBBLE,
Sol. for Pl'ff.
ROBERT MOTT,
Sol. for Def'ts.

Motion and Order Extending Time for the Taking of the Testimony. Entered and Filed March 6, 1880.

U. S. C. C.

E. C. HANCOCK
vs.
Mrs. E. J. NICHOLSON *et als.* } No. 8320. In Equity.

On motion of Henry C. Dibble, solicitor for plaintiff, and
194 upon showing that the time for taking testimony herein, which, by agreement on file, was extended to the 2d Monday in March, 1880, will then expire; and upon showing that plaintiff has had but a short time to take rebutting evidence, and that an important witness is now sick and unable to attend—

It is ordered that the time for taking testimony be extended until the 3d Monday in March, 1880.

Motion and Order to Extend Time to Take Testimony, &c. Entered and Filed March 15, 1880.

U. S. C. C., Dist. La.

EDWARD C. HANCOCK
vs.
Mrs. ELIZA J. HOLBROOK *et al.* } No. 8320. In Equity.

On motion of Henry C. Dibble, solicitor for plaintiff, and upon suggesting sufficient cause to the court, it is ordered that the time for taking testimony in this cause be again extended
195 until the fourth Monday of March, 1880.

Motion and Order for Publication of Testimony and Case Fixed. Extract from the Minutes November Term, 1879.

NEW ORLEANS, THURSDAY, *March* 25, 1880.

Court met pursuant to adjournment. Present: Hon. E. C. Billings, district judge.

EDWARD C. HANCOCK *vs.* E. J. HOLBROOK *et al.* } No. 8320.

On motion of Robert Mott, solicitor for defen'ts, and suggesting ing that the time for taking testimony has expired and the testimony closed, it is ordered that publication of testimony be made, and that this case be assigned for trial for Thursday, 1st April, 1880, at 11 a. m., and that complainant be notified.

Testimony for Complainant. Filed March 25th, 1880.

United States Circuit Court.

196 In the Matter of E. C. HANCOCK *vs.* Mrs. E. J. HOLBROOK } No. 8320.

Testimony taken on behalf of plaintiff before F. A. Woolfley, Esq., U. S. commissioner, this eleventh day of February, 1879. Present: H. C. Dibble, Esq., att'y for pl'ff; R. Mott, Esq., att'y for def't.

ALEXANDER WALKER, sworn for plaintiff, and examined by Mr. Dibble, says:

Question. Please state your name, age, place of residence, and occupation.

Answer. Alexander Walker; fifty-nine; New Orleans; lawyer.

Q. Are you a practical journalist?

A. I have been a journalist for many years.

Q. Were you, in the year 1873, connected with a certain newspaper in New Orleans known as the New Orleans Herald?

A. Yes, sir.

Q. In what capacity were you connected with it?

197 A. I was president of the corporation called the Herald Company, and chief editor.

Q. State at length the circumstances attendant the starting of that newspaper, the amount of money you invested in it, and its success as a newspaper.

A. The newspaper was —. The Herald Company was organized by Mr. Hancock and myself, who had purchased the property in the building previously occupied by the National Republican. We organized it under the charter, (of which, I suppose, you have a copy made before Hero,) on the basis of a co-operative concern, wherein the co-operatives were to have a certain number of shares.

The remaining ones were to be sold to stockholders who desired to invest in the concern.

Q. How much money, if any, within your knowledge, did Mr. Hancock, the plaintiff in this case, invest in the purchase of the material necessary to start the Herald newspaper?

A. Two thousand dollars cash.

Q. Were there any other amounts expended by him in
198 starting that journal?

A. Mr. Hancock and myself put up two thousand dollars each to buy the property. It consisted of very expensive furniture, and was estimated very cheap. Afterwards it was necessary to put up more money cash, and I put up one thousand dollars, and Mr. Hancock put up something over five hundred dollars.

Q. What was the success of your paper?

A. A good deal of stock was sold, from which there was from nine to twelve thousand dollars of stock sold to friends of the enterprise, which money was paid up promptly, and that constituted the capital of the concern; at least, twelve thousand dollars was paid up by stockholders. Mr. Hancock and myself paid up something like five thousand dollars. I can't remember the exact amount for which we held stock in the company—twenty shares each. I considered it was a very successful enterprise under
199 the circumstances. They were very favorable at that time for such an enterprise—in respect to journals in New Orleans—and I thought it up to the time when there was a change made, up to the time they concluded to purchase the Picayune, that it was very successful.

Q. How long did you continue in the publication of the Herald?

A. We continued it down to the purchase of the Picayune by the Herald Company. It was published as an evening paper up to a little while before that, and then it was converted into a morning paper in consequence of negotiations with Warmoth. I think that was a short time previous to the purchase of the Picayune.

Q. Was the Herald or not afterwards merged in the Picayune?

A. We ceased publishing the Herald after the purchase of the Picayune by the Herald.

Q. What became of the advertising patronage and good will of the Herald?

A. I considered it as transferred to the Picayune.

200 Q. Was the Herald Company, at the time it ceased to be published, and assumed the publication of the Picayune, insolvent?

A. By no means; I considered it in a very sound condition.

Q. Were the assets of the Herald Company, at that time, sufficient to discharge all liabilities?

A. Yes, sir; all liabilities at that present time. There was the landlord's claim; we had a lease which, if we had broken it, would have created a liability which would have been sufficient to exhaust the assets.

Q. Please state in your own way all the facts concerned with the

transfer of its business to the New Orleans Picayune; give the whole history of it in your own way.

A. Some time, I think, in November, Mr. Warmoth returned from the North. He came to the Herald office, and seemed to be well pleased with the success of the enterprise proposed, that we should bring out a morning paper. We replied that we had
201 not the means, and did not want to get in debt. He volunteered to get the means, under certain conditions. That we should get the money, the stockholders to surrender one-half of their shares to Hancock and myself, which, united to the shares which we already had—twenty, each—would make eighty shares in the establishment, and that by our pledging those shares with Warmoth he would advance twenty or twenty-five thousand dollars to enable us to carry on a morning paper. We acquiesced in it, and those gentlemen, mostly friends of ours, promptly surrendered the amount of stock, to make up forty shares each to Walker and Hancock, and by the action of the directors of the company, of whom Mr. Joe Hernandez was one, these eighty shares, transferred to Hancock and Walker, were to be held as security to Warmoth, in case he advanced twenty or twenty-five thousand dollars, to enable us to bring out a morning paper. That contract was carried out. We disposed of the stock that way, and he commenced to
202 make advances. I had nothing to do with the finances of the establishment, but I ascertained that he invested some seventeen hundred dollars. We brought out a morning paper, and on the strength of this we purchased an expensive press, which was shipped here. Warmoth paid for having it brought here. Mr. Warmoth was the first to suggest that the Picayune was going to be sold under a seizure, and that Kellogg was going to get it. He said it was very important, in a political point of view, that he should not get it, and he proposed that the Herald Company purchase it. I suggested that we could not get the necessary bond, and he said he would get it, and I did purchase it for twenty thousand dollars. I was told to go to Mr. Hernandez, and I went and got Hernandez, and he signed the bond. The affair was consummated, and we got the sheriff to put us in possession. We then announced
203 at the head of it, that it was conducted by the Herald Company. Three or four days after the paper was published. It created quite a sensation. There was a great rush of persons at the office, and a great deal of sympathy expressed. The Picayune was run down then at the time by a company of amateur journalists, and we found it in a graet commotion, I had a great desire that we have Mr. Holbrook's services in some way, in order to promote the business organization of the department. Mr. Warmoth came and proposed that we should make a transfer of it to Mr. Holbrook on condition that he would assume this bond of twenty thousand dollars, and that Mr. Hernandez go security, so that neither the Herald Company nor Warmoth would incur any risks in having to pay this twenty thousand dollars. In consideration of which Mr. Holbrook would transfer the establishment of the Picayune to a new
204 company, in which the shares should be divided in the fol-

lowing ratio, to wit: That Holbrook, in consideration of the assumption of the bond, should have sixty-five shares and should have designation of three directors, and the Herald Company fifty-five shares and two directors. I was favorable to the proposition as made. I must say that my associates were not so favorable, but there was a call of the stockholders, and they met in the Picayune office. I submitted it to them, and by a majority of the stockholders of the Herald Company I was instructed to consummate that arrangement. It was accordingly done at the office of Semmes and Mott with all parties present—Warmoth, Hernandez, myself, Mott, Semmes and Judge Howe, who represented Mr. Warmoth.

Q. It has been alleged in the answer filed that Warmoth was
205 one of the owners of the Herald newspaper, and that he had advanced the money to enable it to exist. Is that true?

A. I have told you the extent of his interest. Mr. Warmoth subscribed for two shares. At that time the paper was representing the political party in which Warmouth was engaged—the McEnery party. He subscribed for two shares, and purchased George Sheridan's shares, making four shares. Then he advanced on that agreement some seventeen hundred dollars—so I understood from Mr. Hancock, I did not know he had advanced a cent until after the transaction.

Q. Had Warmoth any control of the management of the Herald at that time?

A. None in the world.

Q. In your arrangements with Mr. Holbrook, under which the property purchased at this twelve months' sale was transferred from the Herald Company to the new Picayune Company, formed as stated, what connection were you and Mr. Hancock to have upon the Picayune?

206 A. It was understood between Mr. Holbrook, at the time, that this arrangement was made, that our respective positions were to be—Mr. Holbrook was to be the business manager, vested with a general power of supervision; Mr. Hancock was to be the managing editor; I was to be the chief editor; Mr. Holbrook was to have entire control of the financial and business affairs, a general power of supervision, and that was proposed by me at the first meeting of the board, that we should then and there pass by-laws, and embody it in the new directory of the new company.

Q. How long did you remain connected with the Picayune under the new management, and how long did Mr. Hancock remain?

A. Well, I remained until the twelve months' bond became due, but not in the exercise of the functions for which I had been
207 originally designated. When the bond was approaching maturity, Mr. Holbrook proposed one day, before it had matured, in the board—he brought a document there setting forth, that as the Picayune Company could not pay this twenty thousand dollars—as Holbrook could not pay the twenty thousand dollars, and as Mr. Hernandez would have to pay it, that the property be handed over to him. He proposed that resolution in the board. I opposed it;

protested against it, and wrote out a protest which I had inserted in the minutes of the Picayune Company. Mr. Hancock never attended any meeting of the board of directors, but one or two, and he retired from the board, and retired from the establishment, and I never saw him or held any consultation with him during the year following. I remained for a year, until Mr. Holbrook was placed at the head of the paper, and changed the name of the Pica-
208 yune Company, and put "A. M. Holbrook, agent." I then retired from the establishment.

Q. How long had you known Mr. Holbrook?

A. I had known him for many years; I had frequently been a writer for his paper; I think during the war I was a writer for the paper, and after the war.

Q. Was he, from his experience and attainments, qualified to assume the editorial management of an important daily newspaper?

A. That is a difficult question to answer; in some respects he was, and in some not.

Q. Was he able to write editorials?

A. No, sir; he never professed that he could write editorials, but he only claimed the right to know whether they were adapted to his idea or to the Picayune's.

Q. If you have not done so, state all of the circumstances attending the transfer of the property of the Picayune Company
209 to Mr. Hernandez at the maturity of the twelve months' bond referred to.

A. Personally, I know nothing of the matter—how it was done—further than what I have just stated, taking down the name of the Picayune Company and putting up the name of Holbrook, agent; I was never present in the office after that; all that I knew on that score I derived from Warmoth.

Q. At that time you were still, nominally at least, the president of the Herald Company?

A. The Herald Company had never been settled up.

Q. Its affairs have never been formally wound up?

A. No, sir. I wish to say that shortly after the Picayune Printing Company organized, and Warmoth had left here, we, of the Herald Company, had been exceedingly dissatisfied with the assumption of the entire control of the establishment by Mr. Holbrook, as we thought it was endangering our position, and it
210 was assented to that we retire in a body to the Herald Company, and then we entertained seriously the thought of placing this Picayune property in court, and of resuming the publication of the Herald; before doing that we instituted a search for the stock-books, which had been in the hands of Mr. Hancock, and upon examination of the stock-book we found the handwriting of H. C. Warmoth, and certain blank certificates filled up by him, and sixty-five shares of stock transferred to Holbrook of the Herald Company; we knew of no sixty-five shares to be transferred, and Mr. Warmoth had no right to do so; Mr. Warmoth was away, and upon inquiry from Mr. Hernandez, I think we learned that Mr. Holbrook had purchased those sixty-five shares from Mr. War-

moth, and giving his notes for five thousand dollars—notes bearing interest—and thereby becoming the owner of sixty-five shares in the establishment; we were surprised and very indignant at
211 that, and called into consultation some lawyer, and it was then proposed that we should sue Warmoth, or sue Mr. Holbrook, for those sixty-five shares, and that we should, in some way or other, annul this whole transaction, and that we should go on with the Herald Company. I divided with the others on that subject; I thought we had better go on, and had better try and see if Holbrook could pay those twenty thousand dollars, rather than revive the Herald, and engage in a very doubtful law suit; so I returned to the Picayune office, and remained there until the bond became due.

Q. Was or not Mr. Hancock present at this meeting of the directors?

A. Yes, sir.

Q. Did the Herald Company authorize, in any manner or way, the assignment of sixty-five shares of its stock to Mr. Holbrook?

A. No, sir; there were blank certificates of stock left there to be delivered to certain stockholders who had never paid, and
212 they were signed by the president, and signed by the secretary, and Mr. Warmoth obtained possession of that book surreptitiously, and he filled up those blanks. Mr. Holbrook never mentioned the subject to me until long after.

Q. I understand that the consideration for which Mr. Holbrook was assigned in the charter of the New — Picayune Company sixty-five shares of the stock of that company, not that he possessed sixty-five shares of the Herald, but that he assumed the payment of the twelve months' bond, for which the Herald Company was primarily responsible?

A. Exactly.

Q. Number sixty-five was just the controlling interest in the stock of each company?

A. Yes, sir.

Q. It is stated in the answer in this case, Judge Walker, that Hernandez, to whom the property of the Picayune establishment was assumed to be assigned over to, was to transfer it to the
213 Herald Company upon the payment of the bond?

A. When Mr. Holbrook had indicated that he would not be able to pay the twenty thousand dollars Warmoth had offered, (I don't know whether it was before the twenty thousand dollar bond became due,) Warmoth made *made* an offer to me, individually, that if I would pay the twenty thousand dollars (he seemed anxious about it) that he would hand over the property to me. I replied to that very promptly that he had no right to dispose of the property; that the property belonged to the Picayune Company; that I had no right to purchase it; I would not have a good title. There was afterwards some proposition made of this character to Mr. John Phelps, who was the holder of the bond, or agree to withdraw the bond and allow us to remain in the possession of the property, and that was submitted to my attorney, and give us further time to pay

in case Mr. Holbrook failed to pay. We did make some
214 proposition to Mr. John Phelps, but it had no reference to any attempt on my part to purchase the property. The Herald Company had nothing to do about it.

Q. Did you consider that the Herald Company was liable to pay that bond?

A. Of course not. Mr. Hernandez told me that he was amply secured by the deposit of good paper on the part of Mr. Holbrook, and that they could make the money out of Mr. Holbrook, and that it was a pretty operation of ours in getting fifty-five shares without paying anything.

Q. Is there anything else within your knowledge connected with the issue in this case which you deem it proper to state in this examination?

A. There are some very gross errors in this answer. That statement "that said Walker attended but few of said meetings" is not true. I attended every meeting as long as I remained there,
215 until I separated from the establishment. It is also untrue "that the said Walker was not a stockholder in said company"—that is untrue. I wish to state that at that time the Herald Company was not insolvent. It is stated in the answer of the defendant "that Joseph Hernandez signed the twelve months' bond at the instance of the plaintiff and Alexander Walker, the president of the Herald Company," that is not true. It was at the instance of H. C. Warmoth "that the said plaintiff and Alexander Walker, who subscribed for ten shares of stock of the Herald, paid no money for it," that is entirely untrue. As before stated, I paid three thousand dollars, also "which they purchased and respondent is informed, and believes, was not paid for," that is not so, we paid four thousand dollars to Herwig, the treasurer of the National Republican. It is not true that we never paid anything for it. The property which he showed us cost thirteen thousand dollars. It
216 is also stated in defendant's answer "that there was no money paid for the forty shares of stock which were assigned to Walker and Hancock," I have already stated that about the property which we put in the company, and for our services we received twenty shares each, making forty shares, had been paid for in money by the stockholders whose names will be found in the stock list, and were transferred to us for the purpose of raising money to carry on the establishment.

Q. What do you consider the Picayune was worth, with its goodwill and assets, at the time of the maturity of the twelve months' bond referred to in this case?

A. In the hands of proper conductors, who understood the business, I considered it of the value of at least seventy-five thousand dollars.

Cross-examined by Mr. MOTT:

217 Question. What was it worth in the hands of unskillful men?

Answer. Worth nothing. It would involve many expenses.

Q. Like in the hands of Mr. Phelps?

A. Yes, sir.

Q. And it must be agreeable to the public, or it will be unsuccessful and loose money?

A. Yes, sir.

Q. And the management must be unanimous?

A. Yes, sir.

Q. A newspaper, therefore, is a thing dependent upon public opinion for its success, is it not?

A. Yes, sir; if it is made agreeable to the public, the trading people may subscribe to it and furnish money for it.

Q. You say you and Mr. Hancock bought out the material of the National Republican?

A. Yes, sir.

Q. You paid five thousand dollars cash?

A. Four thousand dollars cash.

Q. And you became stockholders in that company?

A. Yes, sir.

218 Q. You stated, also, that the other stockholders in the Herald Company paid up their stock in cash.

A. Except the co-operatives.

Q. How many co-operatives were there?

A. Barus was one. He had four shares. Paul Waterman two, Norman Walker two. I don't think there was any others. I don't remember them.

Q. The other stockholders, except the co-operatives, paid up their money cash?

A. Most of them.

Q. How much was each share?

A. Two hundred and fifty dollars.

Q. Now, when the other stockholders paid up, did not Hancock and Walker take back the amount of money they had paid for the National Republican, or reimburse themselves?

A. Not a dollar. It was all expended by our financial manager in carrying the paper on.

Q. Did Warmoth pay up the stock he owned in the Herald Company?

219 A. Yes, sir; two shares.

Q. At what time was it that Warmoth agreed to advance money to the Herald Company?

A. I think, in the month of November, 1873, when he came from the North.

Q. Look at that paper and say whether that is your signature. (Shown document.)

A. Yes, sir; that is my signature.

Q. Isn't that the genuine signature of Mr. Hancock to that document also?

A. Yes, sir; I think it is. I am pretty sure it is.

Mr. Mott offers in evidence, on behalf of defendants, document, marked "N, No. 1."

Q. Was not Warmoth authorized to represent you and Mr. Hancock in the negotiation with Mr. Holbrook for becoming interested in the acquisition of the New Orleans Picayune establishment?

A. No authority in the world. He hinted to us that he was doing it, and we approved one of his transactions.

220 Q. At the time the bond of twenty thousand dollars fell due, whose bond, upon its face, did it appear to be; who was the principal upon the bond?

A. I never saw the bond after it fell due. I know when I signed the bond. I signed it as president of the Herald Company.

Q. And Joseph Hernandez was the surety?

A. Yes, sir.

Q. Did not Mr. Hernandez, or some some one else representing Mr. Hernandez, offer to transfer the Picayune property to you at the time of the maturity of that bond, if you would pay the bond?

A. Yes, sir.

Q. Did you not decline?

A. Yes, sir.

Q. Are you certain that you attended all the meetings of the directors of the Picayune Company?

A. During the time I was there, every meeting.

Q. Up to what time were you there?

A. Up to the time the transfer of the establishment was
221 made to Holbrook as the agent of Hernandez.

Q. You say the Herald Company was not insolvent?

A. Yes, sir.

Q. Do you not know that judgments were obtained against the Herald Company which were not satisfied by the property of that company?

A. I can't recollect of any judgments obtained previous to our abandonment of the establishment, going over to the Picayune; several judgments were obtained against the Herald Company after.

Q. Don't you know that those judgments were not paid by the Herald Company?

A. I don't remember.

Q. Do you know that they were paid?

A. No, sir; I do not. There was no liquidator. I insisted that Mr. Hancock liquidate it, and he refused to do it, and it was just left there in the hands of the landlord.

Q. Don't you know that there was a judgment in favor of
222 Newman & Newmayer for material furnished the Herald Company?

A. Yes, sir; I have heard of that judgment.

Q. Did you, as president of the Herald Company, pay that judgment?

A. No, sir.

Mr. Mott offers in evidence, on behalf of defendants, certified copy of judgment, marked "N, 2."

Q. Are you not now suing H. C. Warmoth for moneys which you claim are due you arising out of this liquidation?

A. Yes, sir.

Q. How much do you claim from him?

A. I claim damages; I think it is about nineteen thousand dollars.

Q. I undestand you to say that Governor Warmoth agreed to advance twenty or twenty-five thousand dollars for the purpose of enabling you to enlarge the Herald's operations and become a a morning paper?

223 A. Yes, sir.

Q. Was it not understood that it was to advocate the political principles of Governor Warmoth at that time?

A. On the contrary, Mr. Warmoth never made any such proposition to me. He never asked for any favorable consideration of himself personally until I was afterwards the principal writing man on the Picayune, under Mr. Holbrook's supervision, and received from me the emphatic reproof for asking me to do such a thing, as I never approved of his political course, and did not want to impose on the odium which would result from anything favorable to him, and upon that Mr. Holbrook and myself had a dissension, and some other gentleman was retained in the office to perform the commendation and applauding of Mr. Warmoth.

Q. Could the Herald Company have acquired the ownership of the Picayune without the aid of Warmoth at the time?

224 A. The Herald Company did not desire it; it was only at his inducement; Mr. Holbrook was opposed even to buying it on those terms.

Q. Was there any understanding between you and Warmoth, at the time or before the time of the purchase of the Picayune by the Herald Company, that Mr. Holbrook was to be associated with the Picayune?

A. No, sir; on the contrary, he stated that Mr. Holbrook was in the interest of Mr. Keilogg, and that Kellogg was going to assist him in getting it, and that was the inducement for our getting it.

Re-direct by Mr. DIBBLE:

Question. The question was asked you by defendants' counsel whether the valuation which you fixed upon the Picayune at the time that the twelve months' bond matured—of the value of seventy-five thousand dollars—was dependent upon its being man-

225 aged by persons skillful and capable; state whether it was worth that amount under the gentlemen conducting the Herald.

Answer. I believe with the assistance of competent business men, and with the organization we had, that the value of the property would have been fully that. I had previously spoken to Mr. Holbrook, and it was my intention to employ Mr. Holbrook to manage the business of the establishment.

Q. Are you acquainted with the handwriting of Governor Warmoth?

A. Yes, sir.

Q. Do you know whether the handwriting of the body of the certificate, marked "No. 1," is the handwriting of Warmoth?

A. Yes, sir.

Q. I understand that these certificates which you have testified about were clandestinely filled up by Warmoth?

A. Yes, sir.

Q. It was not done with the knowledge or consent of the Herald Company?

226 A. No, sir; we knew nothing of it for weeks after.

Q. You stated, in reply to a question, that the Herald Company was the principal upon the twelve months' bond. Did not Mr. Holbrook, by the agreement which you have described, become under the law the principal on that bond by assumption?

A. So I regarded it.

Q. Recurring to this judgment of Newman and Newmeyer which was filed here, would or would not the Herald Company have been able to pay that debt, but for that transfer of the business to the Picayune Company?

A. Certainly.

Re-cross by Mr. MOTT:

Question. Did the Picayune Company assume the debts of the Herald Company?

Answer. No, sir.

DISTRICT OF LOUISIANA, *ss:*

227 I hereby certify that, on the day named in the foregoing deposition, I was attended by the said witness and by the counsel for the parties to said cause; that the said witness was duly sworn and examined, and his deposition reduced to writing, and that the signature of said witness to his deposition was waived by consent of said counsel.

June 4, 1879.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of Louisiana.

Cross-examination of Alex. Walker. Filed March 25, 1880.

United States Circuit Court, Fifth Circuit, District of La.

E. C. HANCOCK
vs.
Mrs. ELIZA J. HOLBROOK *et als.* } No. 8320.

Cross-examination of Alexander Walker pursuant to the right reserved when the witness was examined on behalf of the plaintiff, this 4th day of June, 1879, before F. A. Woolfley, United States Commissioner.

228 Present: Henry C. Dibble, Esq., for pl'ff; Robert Mott, Esq., for def'ts.

Alexander Walker recalled.

Cross-examined by Mr. MOTT for defendants:

Question. You are perfectly aware of this suit, having read the bill or petition and answer, and are familiar with the proceedings?

Answer. Yes, sir.

Q. You know exactly what the plaintiff claims, and what is demanded of the defendants?

A. Yes, sir.

Q. Have you any interest in that claim?

A. I have this sort of interest, that a portion of the stock which Mr. Hancock sues on I claim some interest in, an interest which he does not recognize, however.

Q. What is that interest?

A. I think it amounts to this, I understood that certain shares which were sold to the establishment were purchased by
229 Hancock, and I always understood, although he has never recognized it, that after the payment of whatever was paid for that stock, that I was entitled to a portion of it.

Q. What portion of the stock is it to which you allude?

A. There were several shares of stock.

Q. Can you designate on that list of stock the shares that you believe you have an interest in?

A. I always understood that any of the original stockholders of the Herald who assigned their stock or transferred it in the Herald—the second assignment of their shares in the Picayune—was stock held jointly, except some shares that were given personally to Mr. Hancock; that is, those subscribers we obtained jointly to the Herald Company, which were afterwards represented in the Picayune Company. I have always contended that, and Hancock never recognized it; upon that we have been at law all this while.

230 Q. About how many shares were there in that condition?

A. Really, I should have to go over the papers.

Q. There were six shares that belonged to the Tow-Boat Co., that were in that condition?

A. Yes, sir.

Q. Then there was stock of Wm. Mehle and C. Mehle?

A. I considered that stock was sold to Mr. Hancock, and never set up any claim to that.

Q. You cannot particularize any except these six shares.

A. Yes, sir.

Q. Did you write these letters filed in the case of Weed against the Herald Company?

A. Yes, sir.

Q. There are two letters written to Warmoth by you?

A. Yes, sir.

The two letters referred to as having been written by the witness to H. C. Warmouth, are offered in evidence by the defendants, marked "N, No. 4," and "N, No. 5."

231 Q. Look at that certificate and state if that was signed by you and Mr. Hancock—forty shares?

A. Yes, sir.

Q. Is that Hancock's name on the back, signing this transfer in blank?

A. I think so. Exhibit N, No. 6.

Q. There is another for forty shares transferred to you.

A. Yes, sir—marked N, No. 7.

Q. Is not this the genuine certificate issued by the Herald Company?

A. Yes, sir.

Certificate offered in evidence by the defendants.

Q. Is that your handwriting on the petition filed by you in the sixth district court?

A. Yes, sir; I will not go over it, I know the handwriting.

Petition referred to is offered in evidence by the defendants, marked N, No. 8.

Q. You have said in your testimony that you did not sell out your ten shares of stock in the Picayune Printing Company. Did you not transfer that stock in blank to Charles T. Howard,

232 or give him a power of attorney authorizing him to sell it?

A. I never gave him a power of attorney; I think there was some endorsement on the back of it; it was deposited with him with a note of mine for $1,000, with the distinct understanding that it was no transfer, or sale, but was a mere deposit. My own voluntary suggestion with his own remonstrance, to own the property or to recognize it as his property.

Q. I read from the affidavit of Charles T. Howard, that the truth and fact is, or as to any shares of stock belonging to the said Walker, that some time previous thereto, the said Walker desired to borrow $1,000 from affiant, and offered ten shares of stock as collateral security therefor, which affiant declined to accept unless the said Walker would unconditionally transfer the same to affiant; that thereupon said Walker did unconditionally transfer

233 said shares to affiant by signing a blank power to transfer said shares on the back of the certificate thereof and handing the same to affiant; that thereupon affiant informed said Walker that if his note, then given for $1,000, was not paid at maturity that affiant would sell said stock on the market to pay said note, to which said Walker assented, and thereupon affiant loaned him $1,000; that upon the maturity of said note affiant frequently demanded payment thereof from the said Walker, and at his request waited several months, but the Walker failed to pay said note; and thereupon affiant sold said stock, as he had a right to do, for $1,000, which was more than it was worth at that time or since; is that true?

A. That is entirely incorrect, and must have been written by an attorney and signed by Howard; it is incorrect in its state-

234 ment of facts; it is perfectly true that Mr. Howard loaned

$1,000 to me on my note, bearing interest, and not by his demand, but my own suggestion and will; I deposited the certificate of stock with him, but gave no power to transfer, as no transfer could be made without it was made on the books of the company; that Mr. Howard made no demand on this $1,000 note whatever; that said note has been fully paid, and that Mr. Howard has frequently recognized to me that he had no authority to transfer said stock or to give any title thereto in the manner in which it was done, and that he testified perhaps upon being led into the idea that he could make such a transfer.

Q. Do you know anything about that document, whether it contains a correct statement or not—a memorandum of borrowed money; I find it filed in the case of Weed against The Herald Company?

235 A. No, sir; I do not.

Q. How much money did the Herald Company owe Mr. Warmouth at the time you purchased the Picayune establishment at sheriff's sale?

A. I had no knowledge of it whatever; I did not know that we owed him a dollar upon the books of the company.

Q. This is a copy of the certificate of stock for sixty-five shares; I think you can identify it as a copy of the original.

A. I do not know anything about this.

Mr. Mott, for defendants, offers in evidence the deposition of E. C. Hancock, taken in the case of Weed against The Herald Printing Company, No. 5676 of the docket of the sixth district court, marked N, No. 9, given in rebuttal of Alexander Walker's evidence.

Q. What has become of the books of the Herald Co.?

A. I would like to give a good reward to find them; I do not know where they are; I have a much stronger interest in

236 them than anybody else.

Re-examined by Mr. DIBBLE:

Question. With reference to the two certificates of forty shares each, in the Herald Company, just offered in evidence by the defendants, please state whether or not they are the certificates which are referred to in your testimony-in-chief as having been given to Warmouth for the purpose of enabling him to raise money for the Herald, or to secure him for advances made to the Herald?

Answer. Yes, sir.

Q. Were they ever given to Warmouth for any other purpose than as collateral?

A. No, sir; they were not even given as collateral; they were deposited with him to be made collateral in case he made the advances.

Q. Did he ever make advances commensurate with this stock?

A. To my knowledge, I never knew, but I heard from Mr.

237 Hancock, who had the exclusive control of the finances, that he had made advances.

Q. And these are the certificates that were given to Warmouth under the circumstances?

A. Yes, sir.

Q. State the circumstances under which these letters which have been marked N, No. 4, and N, No. 5, respectively, were written to Governor Warmouth?

A. Ascertaining through the suit of Weed that Warmouth was the holder of $5,000 of interest-bearing notes given by Mr. Holbrook for that sixty-five shares of the Herald Company which he had no authority to sell, and that that amount was going to be seized by certain creditors—being president of the company and left in charge of it, I thought it best—as I supposed they were good notes to authorize the negotiation of them, and to recognize Mr. Warmouth's claim to the extent of the advances he had made out of the proceeds, and demanded the balance as president and
238 sole liquidator of the company, considering what Hancock and myself were to the Herald Company, I gave him authority, or requested him to make that disposition of the notes.

Q. You did not consult Hancock in regard to that matter?

A. No, sir.

Q. Was he acquainted with the fact?

A. He knew nothing about it.

DISTRICT OF LOUISIANA, *ss:*

I hereby certify that, on the day named in the cross-examination of Alexander Walker, I was attended by said witness and counsel for the parties to said cause; that the cross-examination of the said witness was reduced to writing, and his signature thereto was waived by consent of said counsel.

June 4th, 1879.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of Louisiana.

239 *Document marked "N, No. 1." Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants, June 4th, 1879.*

No. ——. Shares $250 each. 65 shares.

CITY OF NEW ORLEANS, *State of Louisiana:*

THE NEW ORLEANS HERALD PRINTING CO.

This certifies that A. M. Holbrook is the holder of sixty-five shares of the capital stock of the Herald Printing Company, transferable only on the books of the company on surrender of this certificate.

New Orleans, Dec. 19th, 1873.

(Signed) ALEXANDER WALKER,
President.

(Signed) EDW. C. HANCOCK,
Secretary.

Document marked "N, No. 2. Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants, June 4th, 1879.

240 The State of Louisiana, Sixth District Court for the Parish of Orleans.

I hereby certify that on the 30th day of April, 1874, judgment was rendered in this court in the following entitled suit, in the words and figures following, to wit:

MEYER & NEWMEYER
vs.
NEW ORLEANS HERALD PRINTING COMPANY. } No. 5718.

When, after hearing pleadings and evidence by reason of the law and the evidence being with pl'ffs, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiffs, Meyer and Newmeyer, and against defendant, The New Orleans Herald Printing Company, for the sum of seven hundred and seventy-one $\frac{75}{100}$ dollars, with five per cent. interest from 23d November, 1873, until paid, and costs.

Judgment signed 5th May, 1874.

A. SAUCIER, *Judge.*

241 In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 15th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] (Signed) FRANK WALL,
Deputy Clerk.

Document marked "N, No. 3." Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants June 4, 1879.

In the Circuit Court of the United States for the District of Louisiana.

THOMAS BARNES
vs.
THE NEW ORLEANS PRINTING Co. and others. } No. 7824.

Personally appeared Peter St. Amand, who, being sworn, says that, Thomas Barnes, the plaintiff, was one of the stockholders of the Herald Printing Co. for the number of two shares of the capital stock thereof; that Alexander Walker was the pres-
242 ident of that company, and E. C. Hancock the secretary, and H. C. Warmoth was stockholder for about four shares; Joseph Hernandez was another stockholder for about four shares; said Alexander Walker was a stockholder for about ten shares; the Tow-Boat Association for about six shares; David Bidwell was another stockholder for about two shares; H. S. McComb had four

shares; E. C. Hancock had about nine shares, and there were seventy-nine shares, part of which were held by other persons whose names are not now recollected by deponent, making the whole number of shares of stock of the said Herald Printing Company, on or about the 16th day of December, 1873, one hundred and twenty shares; that some few days previous thereto, that is, about the 13th December, 1873, Alexander Walker, president of said company, purchased for said company, at sheriff's sale, the Picayune Newspaper and Printing Establishment, with the incidents
243 thereof, on a twelve months' bond, and Joseph Hernandez signed the said bond as the surety, the amount of the said bond being about twenty thousand dollars, and the said Herald Company took possession of the property so purchased, and published said Picayune newspaper, for two or three days, as proprietors thereof; that at that time the said Herald Company was insolvent and unable to pay its debts; was entirely without money, pecuniary means, or credit, and had not the means of successfully conducting the said Picayune's Newspaper and Printing Establishment, to do which required either a large cash capital, or a small amount of cash and good credit, and that the said Herald Company had neither; that the said Herald Company was not able to conduct said paper.

That about the said 16th December, 1873, the said H. C. Warmoth, one of the stockholders of said Herald Company, applied to A. M. Holbrook, in the presence of deponent, and proposed
244 on the part of said Herald Company to transfer the said property, purchased as aforesaid at sheriff's sale, in the case of John Phelps *vs.* The New Orleans Picayune Printing and Publishing Company, to the said Holbrook, on his assuming to pay the aforesaid twelve months' bond, given in that case, with Joseph Hernandez as surety; that said Holbrook agreed to said proposition, whereupon, thereafter, the said Warmoth produced the said Walker, the president, and said Hancock, the secretary, of said Herald Company, and a resolution of the board of directors of said Herald Company, and a resolution of the stockholders of said Herald Company authorizing the sale of the said Picayune Newspaper and Printing Establishment to said A. M. Holbrook; and the said Walker and Hancock, in the presence of, and with the concurrence of said Warmoth, transferred said Picayune News-
245 paper and Printing Establishment to said A. M. Holbrook on or about the 18th day of December, 1873.

That at that time the said Herald Company was insolvent and unable to pay its debts to the knowledge of the directors thereof.

That at a part of the transaction aforesaid, the said Holbrook agreed to form a corporation in which he was to have the controlling ownership, and to own as paid up stock sixty-five shares, and fifty-five shares were to be given to the stockholders of the said Herald Company who would join the new corporation, to be known as the New Orleans Picayune Printing Company, the negotiation for which transaction was conducted solely and entirely by Walker, Hancock, and Warmoth, who represented that they were fully au-

thorized to act in the premises and to suppress the Herald newspaper for the benefit of the new concern about to be established, and these parties represented that the shares of stock of the
246 Herald Company consisted of one hundred and twenty shares; that of these one hundred and twenty shares the said Warmoth, independent of the four shares heretofore spoken of in this affidavit, held sixty-five shares of said stock in his own name, or had it in some way in conjunction with said Walker and Hancock, but of which he had the control as owner; that the said Holbrook had, in the negotiations with said Warmoth for the purchase of the Picayune establishment, stipulated that on his assumption of the aforesaid twelve months' bond the whole of the effects of the said Herald Company should be transferred, assigned, and delivered to said Holbrook as the owner thereof to prevent the same being used to conduct and maintain a rival paper, but when the transaction was about being consummated it was stated by the said Warmoth that if Holbrook took the effects of the Herald Company he should assume its debts, and that it was necessary and proper that
247 said effects should be applied by said Herald Company to the payment and extinguishment of its debts, and thereupon the said Warmoth proposed to assign to said Holkrook the sixty-five shares of the capital stock of said Herald Company above spoken of, that being more than a majority of all of said stock of said company, which would then enable said Holbrook to control said Herald corporation should it continue in existence and prevent the publication of a paper by the use of its materials, which said shares were so transferred to said Holbrook.

The the amount of the twelve months' bond assumed as aforesaid by Holbrook was twenty thousand dollars; that in addition to the assumption of that bond Holbrook agreed to and did execute his two notes to his own order for twenty-five hundred dollars each, both of which were delivered to Warmoth with the assent,
248 as I supposed, of said Walker and Hancock—this was part of the said transaction.

That at the time the said transaction took place the said Warmoth, Walker, and Hancock assumed to be the Herald Company, and assumed the right to dispose of its property, rights, and franchises, and professed to be so authorized to do.

That the understanding and agreement between said Warmoth, Walker, Hancock, and A. M. Holbrook at the time of the formation of the said New Orleans Printing Company, was that the said Holbrook should have the control and management of the said Picayune Newspaper and Printing Estsblishment, for which purpose he retained sixty-five out of the entire one hundred and twenty shares of stock in said company; that the said Walker and the said Hancock should give their aid, assistance, and support to the new enterprise by the use of their influence, abilities, and countenance; that to the contrary
249 they, the said Walker and Hancock, contrary to the said agreement with said Holbrook, aided, countenanced, if they did not actually assist in getting out the newspaper called the Bul-

letin, through the use of the materials and effects of the Herald Company, which they had stipulated should be suppressed, and by the publication of said Bulletin, the earnings of the Picayune were greatly diminished, and there were no profits made thereby, and money had to be borrowed to keep the paper going.

That the said Picayune Company made no money during the year it possessed and controlled the Picayune Newspaper and Printing Establishment. That the expectation of Holbrook was to make money from the buying of the paper, &c., when the twelve months' bond aforesaid was about falling due, he did, as any honest man would have done; he gave up the paper, &c., to those
250 who had to pay the bond which the Herald Company was primarily bound to pay and could not pay, and which he assumed to pay and could not pay, in consequence of the acts of the officers, owners, and principal stockholders of the Herald Company, which had become insolvent and defunct.

That after Mr. Hernandez had acquired the ownership of the property in satisfaction of the twelve months' bond, he being in advance over twenty-one thousand dollars, and said Warmoth holding the two notes given by Holbrook when he assumed the said twelve months' bond, each for $2,500, Hernandez, for himself and Warmoth, proposed to sell the said Picayune establishment to the said Holbrook for the sum of about $32,000 thousand dollars on time, notes for which were to be, and were given for said sum of twenty-seven thousand dollars, they were negotiable in form, and were secured by a pledge of the property, these notes were passed
251 off or sold before maturity by said Hernandez to said Warmoth, and afterwards they were put upon the market and sold.

That the said property, the Picayune newspaper, is economically and ably conducted and managed, gives satisfaction to its patrons.

That a newspaper requires large amounts of money or credit to conduct it, a peculiar skill in its control, to make it successful, all of which the present managers possess.

That the whole establishment is not worth to-day the sum of twenty-five thousand dollars.

That the said A. M. Holbrook, at the day of his death, owned over eighty-five shares of the whole of said stock of the said Picayune Printing Company, and all except the stock claimed to be owned by E. C. Hancock, Thomas Barnes, and some few others who acquiesced in the sale made to Hernandez in satisfaction
252 of said bond, and that he, said Holbrook, then owned the ten shares of stock claimed by Alexander Walker, he having purchased said stock in the market.

(Signed) P. ST. AMAND.

Sworn to and subscribed before me, this 13 April, 1876.

(Signed) WM. H. HOLMES,

Second Justice of the Peace, Parish of Orleans, La.

Document marked "N, No. 4." Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants June 4th, 1879.

NEW ORLEANS, 27 *April*, 1874.

H. C. WARMOTH:

SIR: The notes referred to by Mr. Hancock, exhibited to me, marked A, were given by Mr. Holbrook for sixty-five shares of stock in Herald Co., pledged to secure you for money advanced to Hancock and myself for the support of the Herald paper. You are hereby authorized to sell at private sale the said notes
253 to pay yourself the amount advanced by you, to wit, $2,109.85, and to turn the balance over to me.

Y'r ob't serv't,

(Signed) ALEXANDER WALKER.

Document marked "N, No. 5." Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants June 4, 1879.

NEW ORLEANS, 10 *April*, 1874.

H. C. WARMOTH, Esq.

SIR: I hereby authorize and empower you to sell the notes of A. M. Holbrook, secured by morgage, and by him endorsed for $2,500 each, payable in one and two years from December, 1873, and out of proceeds to pay yourself the $2,150 borrowed from you by E. C. Hancock and myself, and to retain the balance subject to my order.

Respectfully,

(Signed) ALEXANDER WALKER.

254 *Document marked "N, No. 6," Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants June 4, 1879.*

No. 37. Shares, $250 each. 40 Shares.

CITY OF NEW ORLEANS, *State of Louisiana:*

THE NEW ORLEANS HERALD PRINTING CO.

This certifies that Edw. C. Hancock is the holder of forty shares of the capital stock of the Herald Printing Company, transferable only on the books of the company on surrender of this certificate.

New Orleans, Dec. 2, 1873.

(Signed) ALEXANDER WALKER, *President.*

(Signed) EDW. C. HANCOCK, *Secretary.*

Endorsed: For value received transferred.

E. C. HANCOCK.

Document marked "N, No. 7. Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants June 4, 1879.

255 No. 36. Shares, $250 each. 40 shares.

CITY OF NEW ORLEANS, *State of Louisiana:*

THE NEW ORLEANS HERALD PRINTING CO.

This certifies that Alexander Walker is the holder of forty shares of the capital stock of the Herald Printing Company, transferable only on the books of the company on surrender of this certificate.

New Orleans, Dec. 3, 1873.

(Signed) ALEXANDER WALKER, *President.*
(Signed) E. C. HANCOCK, *Secretary.*

Endorsed: For value received I hereby transfer the within shares and certificates.

(Signed) ALEXANDER WALKER.

Document marked "N, No. 8." Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants June 4, 1879.

256 To the Honorable A. Saucier, judge of the sixth district court of New Orleans:

The petition of Alexander Walker, a citizen of New Orleans and of the State of Louisiana, humbly shows that on and for some time before the fifteenth day of December, 1873, he was and is now the president and owner of forty shares of the stock of a stock company entitled the New Orleons Herald Company, which was duly organized under the laws of Louisiana to print and publish a newspaper and for other purposes; that the value of stock in said Co. held by petitioner was ten thousand dollars, and your petitioner and his associates had already expended and invested in carrying out the objects of said company twelve thousand dollars, and thereby had established and created a flourishing newspaper which they held and estimated as of the value of twenty-five thousand dollars.

257 Now your petitioner shows that whilst the Herald Co. was in this prosperous condition, the president and directors thereof were approached by H. C. Warmoth, a citizen of Louisiana, who was owner of four shares in said company, with an offer and inducement to aid them in the purchase of the larger newspaper establishment, known as the Picayune, then advertised by the sheriff as for sale under execution in the suit of John Phelps *vs.* Picayune Printing and Publishing Co. of the docket of this court; that said sale was to be made for a twelve months' bond, and the said H. C. Warmoth proffered to furnish a good and satisfactory security on said bond.

Petitioner, by instruction of the board of directors of the Herald Company, accordingly attended the sheriff's sale and bid twenty thousand dollars for the Picayune establishment, and it was

258 adjudicated to him, as president of the Herald Co., a satisfactory bond, being furnished with Joseph Hernandez as security, interposed by and for H. C. Warmoth.

Petitioner shows that immediately after said adjudication he took possession of the Picayune establishment, and all its property, at 66 Camp street, for Herald Co., and proceeded to conduct and administer the same with great success whilst thus in the possession and ownership of the said property. The president and directors thereof were again approached by H. C. Warmoth with the proposal that, in order to release him and Hernandez from liability on the twelve months' bond given in the purchase of the Picayune, and for further consideration and reasons, that a sale and transfer of the establishment should be made by the Herald Co. to A. M. Holbrook on the condition that he assumed the payment of the
259 twelve months' bond and deposited with Hernandez satisfactory securities, which could be applied to such payment, and that further said Holbrook would enter into an association to be styled the N. O. Picayune Printing Company, and that the establishment then held and owned by the Herald Company should be delivered to the N. O. Picayune Printing Company; and it was stipulated and agreed that in said company A. M. Holbrook should have sixty-five shares, and that fifty-five shares should be distributed and assigned among the stockholders of the Herald Co.; that the whole number of shares was one hundred and twenty, of the par value of two hundred and fifty dollars per share; that these propositions were accepted and agreed to by the directors and stockholders of the Herald Company, and were carried into effect on the 19th December, 1873, by the respective parties, to wit: Petitioner, representing the Herald Co., by A. M. Holbrook, Joseph
260 Hernandez, and H. C. Warmoth, who were all present and consenting to the same; that the following act was then executed and delivered:

By virtue of the power vested in me, and by the within resolutions of the stockholders, as president of the Herald Printing Company, and whereas A. M. Holbrook has assumed, to the satisfaction of J. Hernandez, the payment of the bond for twenty thousand dollars, given by the Herald Co., with J. Hernandez as security, to the sheriff in possession of the Picayune establishment, at judicial sale, in the suit of John Phelps *vs.* N. O. Printing and Publishing Co., I do hereby sell and transfer unto A. M. Holbrook for the price aforesaid the said Picayune establishment, and its rights and properties, and incidents and appurtenances to the same intent and in the same manner as said Herald Co. acquired the same at said judicial sale.

261 Given under my hand and seal, this 19th December, 1873.
(Signed) ALEXANDER WALKER.

And at the same time, and as a part of the same transaction, the charter of the New Orleans Picayune Printing Co., which is hereto annexed for reference, was duly executed before R. C. Mott, notary public, and signed by the respective parties. That this charter con-

tained the following obligation: "The Picayune Newspaper Establishment recently purchased at sheriff's sale by the Herald Printing Company, which had been by said company transferred and sold to A. M. Holbrook, is by said A. M. Holbrook now sold and delivered and transferred to this corporation at the price and sum of thirty thousand dollars cash, which the said Holbrook acknowledges to have received, and the said establishment as acquired at said sheriff's sale is the property of this corporation, and the shares of stock in this corporation are fixed at one hundred and twenty of $250
262 each, making an aggregate of thirty thousand dollars, and the said shares are full paid, and are distributed among the subscribers in the following proportions."

Petitioner shows that by said charter he was declared and recognized as the owner of ten shares of the stock of said company in his own name; that there were other shares held in the names of others which were owned by petitioner, and that said shares, including the ten named and others which have been assigned and transferred to him, amounting in the aggregate to twenty-five shares, were and are still owned and held by petitioner and have never been alienated by him; that said shares are of the value of seven dred and fifty dollars each.

Petitoner further shows that, as attorney and mandatory for the stockholders of the Herald Co., he prosecutes and brings this
263 suit in behalf of all stockholders of said company who have not alienated their said shares.

Further he shows that he is the joint owner of all the property, assets, and appurtenances of the Picayune Printing Company in the proportion of the shares held and owned by him, and that his associates and principals, for whom he appears as attorney and mandatory, to wit, the stockholders of the Herald Co., represented in the Picayune Printing Company, are the owners of such parts and proportions of said property as are expressed and indicated by their respective shares, set forth in the charter of said company.

That full value was given by petitioner and his associates for said shares, and that the only value or consideration given by A. M. Holbrook for the sixty-five shares assigned to him was in the assumption by him of the payment of the twelve-months' bond, as above set forth.

264 Now petitioner avers that under this charter and agreement he transferred to the Picayune Printing Co. the Picayune establishment; that the directory named in the charter proceeded to administer the said property and affairs, and that A. M. Holbrook was chosen president of said company; shows that the Picayune Printing Co. was prosperous under this administration; that it accumulated large assets, and its property greatly increased in value.

Petitioner shows that A. M. Holbrook exercised sole control of the administration of the finances and business of the establishment; that though only a trustee, he claimed and exercised proprietary rights, excluding the directors and stockholders from any

participation therein, rendering no account of his administration, appropriating to his own private use the property of the company, and plotting and scheming to defraud the stockholders of
265 their rights and interests, and doing divers other wrongful acts in violation of his trust, of equity, and in fraud of petitioner and his associates; that these acts of cover and fraud finally culminated in a conspiracy and combination with H. C. Warmoth to obtain possession of the Picayune establishment and defraud the other joint owners of their interest and title therein.

That in fulfillment of this conspiracy and fraud, Holbrook convened a meeting of the board of the directors of the Picayune Printing Co. on the 14 December, 1874, and then and there caused to be introduced the following resolution:

Whereas the twelve-months' bond, for the original purchase price of the Picayune establishment, given to the sheriff, in the suit of John Phelps *vs.* New Orleans Printing and Publishing Company, 21979, sixth district court, amounting to $20,211.38, is about to become due and payable; and whereas A. M. Hol-
266 brook is unable to pay the same; and whereas this company has not the means to satisfy said bond, and it is just and equitable that this company should not retain the property for which the said bond was given, to the detriment of the surety on said bond—

Therefore be it resolved, That in case Joseph Hernandez, the surety of said bond, shall pay the same, the president of this company be, and he is hereby, authorized to sell and transfer the Picayune establishment, and all its property and good will, to the said Joseph Hernandez, in satisfaction of his claim as surety on said bond.

Your petitioner, as directors, opposed and protested against said resolution as illegal and *and* a fraud on the stockholders of the company; that the bond was not due by the company, but by Holbrook alone, and that the attempts to convey said prop-
267 erty to Hernandez was a fraud; that petitioner's protest was entered on the minutes of the company; that said resolutions were adopted by the vote of Holbrook and of two directors controlled by him, and that on the next day, to wit, the 15th December, 1874, Holbrook announced himself as in possession of the Picayune establishment, as agent of Joseph Hernandez; that the twelve months' bond given by petitioner, with Hernandez as security, was not then due and payable, nor had there been any demand on petitioner for the payment of the same, nor has there ever been any such demand or any default on the part of the Herald Company.

Petitioner further shows that after thus illegally and wrongfully obtaining possession of the Picayune establishment, a pretended and illegal call and meeting of the stockholders was then held in the Picayune office, on or about the 18th December, where,
268 by a vote of persons not entitled therein, it was declared that the Picayune Company was dissolved, and two commis-

sioners were appointed to liquidate its affairs; that the said meeting was controlled and all its acts directed and done by A. M. Holbrook and H. C. Warmoth, who had already transferred the whole property of the company illegally to Joseph Hernandez. The commissioners appointed to liquidate the affairs of the company thus defrauded were the employees of A. M. Holbrook, and should not be intrusted with such duty and responsibility even if their appointment were legal, which is denied.

Petitioner further shows that immediately after such pretended dissolution of the corporation and appointment of the liquidators, Warmoth and Holbrook colluded and combined to transfer and convey the property of the said company and the Picayune establishment from Warmoth to Holbrook (Hernandez interposed
269 without interest for Warmoth) for the consideration of $840 per mo., payable from the earnings of the establishment, until the full sum of $20,220 shall be paid, with the right to Warmoth to repossess the property on the failure to pay for any month, which transaction was illegal, null and void, so far as it affected the title of your petitioner and his associate stockholders.

Your petitioner claims that all these acts above set forth on the part of H. C. Warmoth and A. M. Holbrook were illegal, fraudulent, and against equity; that neither Warmoth, (Hernandez interposed,) nor Holbrook ever acquired any just or legal title to the property of the Picayune Company; that Holbrook's possession was as trustee for the stockholders of said company; that it was a violation of such trust in him to transfer the same to any one, and a fraud and conspiracy to transfer the same to Warmoth,
270 Hernandez interposed; that the company was illegally dissolved and placed in liquidation; that no title could pass to Warmoth or Holbrook under any such proceedings, and that the right, title, and interest in this petitioner to have said property to the extent of the twenty-five one hundred and twentieth thereof is still a subsisting and valid title and ownership, and that his several associate stockholders, for whom he herein appears, have like titles and rights of ownership in said property.

Wherefore your petitioner prays that this honorable court have H. C. Warmoth and A. M. Holbrook cited to appear and answer this demand; that, after due proceedings, your honor will decree that petitioner is the owner of twenty-five one hundred and twentieths of the establishment known as the Picayune, with all its property and assets; that possession thereof by H. C. Warmoth and A. M. Holbrook is illegal and fraudulent; that
271 the dissolution of the Picayune Co. is illegal and void; the appointment of liquidators illegal and void; and petitioner prays that your honor will appoint a reciver, judicial liquidator, or liquidator, as may be most proper in law and equity, to take possession of said property and establishment, and proceed to the liquidation and partition of the same.

Petitioner prays for all further writs and processes which law and equity may prescribe for the protection of his rights and interests, and those of his principals and associates. He also avers that, by

the wrongful acts herein of said H. C. Warmoth and A. M. Holbrook, he has suffered damages to the amount of ten thousand — for which he asks for judgment against them *in solido*, and for all costs of this suit.

Petitioner prays for all general relief in law and equity
272 which the nature and facts of the case demand.

(Signed) ALEXANDER WALKER,
Attorney-at-Law, in p. p.

Alexander ——, being duly sworn, says that the facts and allegations set forth in the above petition are true and correct.

(Signed) ALEXANDER WALKER.

Sworn to and subscribed before me, this 28 January, 1875.

(Signed) F. WALL, *D'y C.*

A true copy.

[SEAL.] (Signed) FRANK WALL, *D'y Clk.*

Document marked "N, No. 9." Referred to in the foregoing Cross-examination of Alexander Walker, and offered in Evidence by Defendants June 4, 1879.

Personally came and appeared before me, W. T. Houston, first justice of the peace for the parish of Orleans, E. C. Hancock, who, being duly sworn according to law, doth depose and say in answer to the—

273 1st. I was managing editor during the time the paper was published; there is an entry of sixty-five shares of stock to A. M. Holbrook; I do not know the handwriting of the entry; I know nothing about it; I do not; none whatever, except hearsay; the stock-book was at that time in Gov. Warmoth's possession; he never gave any reason for taking it; he came and asked us for the stock-book; I was the secretary; I signed the book and gave the certificates to the president, Judge Walker; I signed five certificates; the blanks were not filled up; they were all signed on or about the 19th day of Dec., 1873; nothing was written on the stub; they were in blank, as to the number of shares; it was about the 19 of Dec., 1873; it was on the day that the Herald published the Picayune; it was the day after the purchase of the New Orleans Picayune by the Herald; I think it was the day after the Herald purchased the Picayune; four of them are in the book
274 marked null and void; four of the five certificates I have; no, sir; I never knew that any of those certificates were given to Mr. Holbrook; Gov. Warmoth never told me what he did with them; officially, I called on Mr. Holbrook to demand payment for the shares in conformity to the charter; I received no answer; (objected to by counsel for garnishee;) eighty shares, forty shares each, were given to us, Alexander Walker and myself, by the board; the consideration is expressed in the minutes; the shares were transfered in blank to Gov. Warmoth; the consideration was,

I believe, services rendered by Mr. Walker and myself; they were transferred in blank and given to Gov. Warmoth Dec. 3d; entirely different certificates were given to Gov. Warmoth, signed in blank; the certificates supposed to be dated Dec. 19th, first spoken of herein, is a entirely different certificate from those dated Dec. 3d,
1873, spoken of in the second place; the certificates that
275 were issued to President Walker and myself, in consideration of services, were transferred in blank to Gov. Warmoth for a consideration, which consideration was that Gov. Warmoth should advance to the New Orleans Herald Printing Co. sufficient money to make it a success up to twenty thousand dollars, and even thirty thousand dollars, if necessary; I received for account of the Herald Co., at different times, some seventeen hundred dollars; afterwards he gave the president some four hundred dollars towards paying for the Picayune New Orleans Herald Co.; has never received anything in consideration of the sixty-five shares, marked on the stock-book with the name of Mr. Holbrook; we had no treasurer; I was manager; if anything had been received further from Gov. Warmoth, I should have known it.

Cross-examination:

I do not now recollect the exact amount I received from
276 Gov. Warmoth on the eighty shares transferred to him; it was some seventeen hundred dollars; it was used for the benefit of the Herald Printing Co.; I ceased to be manager when the Herald ceased to be published; that is, about the 20th of Dec., 1873; after new year he does not recollect exactly when he resigned, and sent the books to President Walker; of the eighty shares which I owned forty, and President Walker owned forty; I do not know of any other *other* shares than those eighty transferred to Gov. Warmoth about the same time by other persons; these were one hundred and twenty shares in the company; I think that all the shares were not issued by about nine, including the eighty shares transferred to Gov. Warmoth in blank.

In regard to my having been recording as owning the forty shares, that in reality I was to own nothing, that the shares signed
of by the other stockholders at the rate of fifty per cent., and
277 the balance of the unplaced stock were by agreement issued to us for services rendered on condition of their transfer in blank to Gov. Warmoth; all these facts Gov. Warmoth had full knowledge of; I was actuated in this action by a desire to vitalize the stock and to protect the creditors of the Herald and to make the Herald a success.

Re-direct examination:

I have every reason to believe that Gov. Warmoth had full knowledge of the transaction in conversation with him; we went over the whole thing. The sixty-five shares heretofore spoken of supposed to be issued to Mr. Holbrook were issued without my knowledge or consent.

I do not lay claim to any notes in Gov. Warmoth's hands paid

by Holbrook for stock or otherwise. My financial transactions with Gov. Warmoth were in my official capacity as connected with the Herald Co.

278 Question propounded by Alexander Walker, president, and as representing the Herald Printing Co.

When I signed the five certificates in blank, I sent them in the book to President Walker by Mr. Weed. It may be that I handed them to Gov. Warmoth after they were signed by President Walker.

(Signed) EDW. C. HANCOCK.

Sworn to and subscribed before me, this 14th day of May, A. D. 1874.

(Signed) W. T. HOUSTON,
First Justice of the Peace for the Parish of Orleans.

Endorsed: No. 5676. 6th dist. court. W. A. Weed *vs.* Herald Printing Co. Testimony of E. C. Hancock.

Testimony for Complainant. Filed March 25th, 1880.

United States Circuit Court, District of Louisiana.

E. C. HANCOCK
279 *vs.* } No. 8320.
ALVIN M. HOLBROOK.

Evidence taken on behalf of the complainant, before F. A. Woolfley, United States commissioner, 13th February, 1879.

Present: Henry C. Dibble, Esq., for complainant: Robert Mott, Esq., for defendant.

JOSEPH L. HERWIG, sworn for complainant, says:

By Mr. DIBBLE:

Question. You made an affidavit in the case of Thomas Barnes against the New Orleans Printing Co. and others in the circuit court, which was sworn to on the 25th of April, 1876, in these words:

"Personally appeared Joseph L. Herwig, who, being duly sworn, says that he was one of the stockholders of the association which owned the 'National Republican Newspaper Establishment,' No.
109 Gravier street; that it was a printing newspaper estab-
280 lishment; that he, with the other proprietors thereof, were authorized to sell the same, and that they did sell the same to Alexander Walker and Hancock for $4,000 cash, which was duly paid by the said Walker and Hancock; and that with said office and material, and lease a newspaper called the Herald was established and conducted: that affiant had no interest in said Herald Company, or the proceeds of the sale." Do you reiterate the statement made in that affidavit?

Answer. I do.

By Mr. MOTT:

Q. Were you paid in cash the purchase price of the property?
A. Yes, sir.
Q. Who paid you, Walker or Hancock?
A. I don't remember; I think they were both together.
Q. What did the property consist of?
281 A. Office furniture, printing material, type, and whatever else is used in a newspaper office.

PAGE M. BAKER, sworn for complainant, says:

By Mr. DIBBLE:

Question. You made an affidavit in the case of Mr. Barnes against The New Orleans Picayune Printing Company, in the circuit court, which was sworn to on the 22d of April, 1876, in the following words:

"Page M. Baker, being duly sworn, says, that the New Orleans Bulletin was established at 109 Gravier street, in the building formerly occupied by the Herald Company; that the premises and material were then in possession of the sheriff's keeping at the suit of the lessor; that the possession of said property was obtained by the late Dan. Byerly and affiant upon an agreement made between them with the sheriff and John Finney, Esq., the agent of
282 the landlord; that the Herald Company and Alexander Walker and Hancock were no parties thereto, nor any other way, and to promote the establishment of the "Bulletin," as affiant believes, were opposed to said enterprise, and that Walker, the president of the Herald Company, trying to defeat the same, the furniture and other property was sold at sheriff's sale, and was bought by affiant and Dan. Byerly." Do you reiterate that statement?

Answer. I do; I will qualify that affirmation by saying that when I made that affidavit, I remember something which Walker had done which I now forget; that there was something, I am sure, because I made that affidavit on that account, but what it was, at this moment, I can't recollect.

By Mr. MOTT:

Q. Were you one of the owners of the paper called the Herald?
A. Yes, sir.
283 Q. Were you the partner of Dan. Byerly?
A. I thought I was, until the supreme court said I was not, notwithstanding the fact that I have a paper in which the assertion is made that I was a partner; the first number said I was a partner, but the supreme court said I was not.

JOSEPH HERNANDEZ, sworn for the complainant, says:

By Mr. DIBBLE.

Question. In the month of December, 1873, you became surety on a

twelve months' bond, given by the New Orleans Herald Company for the purchase of the property of the New Orleans Picayune?

Answer. I recollect I signed a bond, but I don't know whether it was for the New Orleans Herald Company.

Q. At whose instance, in the first place, did you sign that bond?

A. Governor H. C. Warmoth.

Q. Was there not a subsequent arrangement made by
284 which Mr. Holbrook assumed payment of that bond?

A. I think that Mr. Holbrook gave me security and guaranteed me against loss on the bond.

A. What was the character, nature, and value of these securities?

A. Some mortgage notes, I think it was all in mortgage notes; this thing is out of my mind.

Q. How long did you retain these securities in your possession?

A. Until after the payment of the bond.

Q. Did these securities belong to Mr. Holbrook?

A. I think they did.

Q. Were they furnished to you by Holbrook?

A. I can't recollect; really I don't remember.

Q. Did you hold them in your possession as the securities of Holbrook?

A. I held them in my possession as a guarantee against all loss on that bond; I don't know whether it was on account of Holbrook or not.

Q. What became of the securities?
285 A. I returned them.

Q. To whom?

A. I think to Semmes & Mott.

Q. Were they the attorneys of Mr. Holbrook?

A. I think so.

Q. In returning these securities to Semmes & Mott, did you understand you were returning them to Holbrook?

A. This thing is out of my mind entirely, and what I can recollect may not be the facts.

Q. Generally speaking, do you or do you not remember of any transactions that were made between yourself, Governor Warmoth, and Holbrook, that it was agreed that Holbrook should secure you against loss upon this bond, and did he not secure you?

A. The fact was that Governor Warmoth should secure me if I signed the bond. Mr. Walker came first to me and asked me, and I did not like it much, and Walker said that Governor Warmoth would secure me; then Governor Warmoth came to me per-
286 sonally and said he would secure me against loss. After I signed the bond, the nature of the security was changed and these notes I remember were given to me. They were Holbrook's mortgage notes given to me as security upon the bond.

Q. And the gold bonds given to you by Governor Warmoth were returned?

A. I never had any.

Q. You retained these notes of Holbrook's until the whole thing was settled?

A. Yes, sir; I had to pay the bond of $20,000, and after that they gave me the money.

Mr. Mott reserves the right to cross-examine this witness in the future, when he produces his documents.

RICHARD WEIGHTMAN, sworn for the complainant, says:

By Mr. DIBBLE:

Question. It appears that on the 11th of December, 1876, you signed and swore to an affidavit, in the following words:

287 "Before the undersigned authority personally appeared Richard Weightman, who, being duly sworn, deposes and says, that in the month of December, 1874, affiant was connected with the New Orleans Picayune, and was at that time managing editor of said paper; that the late A. M. Holbrook was at that time editor in chief, and presumed to be in sole charge of said newspaper establishment. On or about the 10th of December of said year, said Holbrook came to affiant, and said to him, affiant, that he, Holbrook, had transferred eight shares of the Picayune's stock to affiant, and that he, Holbrook, wanted affiant to attend a meeting of the stockholders of said company which was to take place that day. He, the said Holbrook, remarked to affiant that the affair was a mere legal fiction, nothing, intended simply to complete certain formalities incident to the liquidation of the affairs of the

288 company, and to complete the acquisition of the said property by him, the said Holbrook. The impression left upon affiant's mind was, that Holbrook then held in his own right all the shares of the said company, and that the object in transferring the stock to affiant and others, was to enable him, Holbrook, to hold a stockholders' meeting in number and amount. Affiant further states that he attended the meeting of the stockholders, as requested, in the character of a stockholder; that he then and there voted yea on a motion to liquidate the affairs of the corporation, which affiant understood to be the legal purpose of the meeting. Affiant further states that from that time forth Holbrook assumed whole ownership, although affiant subsequently heard there were other stockholders in the company holding shares of stock that were not represented at said meeting. Affiant further says

289 that some few months after the death of the late Holbrook affiant received a letter from Mrs. Eliza Jane Holbrook, widow, asking affiant to return the eight shares of stock which were transferred to affiant, as herein set forth, saying in said letter to affiant that Mr. Holbrook had told her of the occurrence. In said letter, the said Mrs. Holbrook alluded to the transaction as a mere empty form, but said she desired possession of the certificate in order to facilitate the settlement of the estate of her late husband. Affiant found the certificate and returned it to her. In said letter the said Mrs. Holbrook mentioned that the stock which had been transferred in a similar manner, and for the

same purpose to George Nicholson, had been by the said Nicholson returned to her."

Mr. Mott objects to the parole proof of the contents of the letter, above referred to, as being secondary evidence.

290 Q. Do you now reiterate the statement contained in the affidavit read?

A. Yes, sir.

Q. Are you able to produce the letter referred to in the affidavit?

A. I don't know.

Q. When did you last see that letter?

A. At the time I made that affidavit, I have not seen it since, I don't think I made a point of keeping it.

Q. Will you make a search for that letter, and if possible, produce it in the further proceedings of this case?

A. Yes, sir, I will.

The complainant reserves the right to recall this witness to ascertain if this letter has been found.

M. F. BIGNEY, sworn for complainant, says:

By Mr. DIBBLE:

291 Question. On the 4th of December, 1876, you made the following affidavit which was filed in this case, while the suit was pending — the State court: "Before the undersigned authority personally came and appeared M. F. Bigney, who, being duly sworn, says: That he has been engaged in the newspaper business in this city since 1848, in the capacities of publisher, proprietor, and editor, that he considers himself an expert, and well-fitted to judge approximately of the value of a newspaper establishment, and considers the New Orleans Picayune Printing Establishment to have been worth in the year 1874, not less than $50,000." Do you reiterate the statement made in that affidavit?

A. I do.

By Mr. MOTT:

Q. On what do you base that opinion of $50,000?

A. I base it on opinion, and the fact that I know that office had been sold for $100,000. What I knew of the value of the type, material, and other property connected with it, I considered that it had probably deteriorated in a manner from a $100,000 to

292 $50,000 at that time.

Q. Do you know that the property subsequently sold for twenty thousand dollars after it had sold for $100,000?

A. Yes, sir; I knew that.

Q. What was it that caused any increased value of $30,000, between the years 1873 and 1874?

A. I knew that after carrying on an establishment, and if it were properly conducted, the "Picayune" was in a situation to command a large share of business, public and private, of this community.

Q. Do you estimate the type, material, and property there, worth anything like $50,000?

A. I knew the press alone cost something like $30,000. I know that the press of the Republican office, which was just the same kind of a press, cost that.

Q. How do you know it was the same kind?

A. I know it was a three-cylinder Hoe press. I know what we pay for a Hoe press, a six-cylinder Hoe press costs $60,000.

293 Q. Do you know what that Republican press sold for?

A. The entire establishment, press and all, sold for $3,000.

Q. Was not that a superior establishment to the Picayune, as regards type, press, and material?

A. I presume there was the same material in the Picayune office.

Q. I would like you to tell us whether your estimate of the value of this property does not depend upon the speculative value—that is, whatever it may be considered worth in the hands of a competent person. Is it not true that there is no value to a newspaper, except its type?

A. A successful newspaper has a value independent of the material; an unsuccessful newspaper only depends upon the material for value.

Q. It depends upon the management of the paper?

A. Yes, sir.

Q. Do you know what was the management of the Picayune in 1874?

294 A. The Picayune had been changing so frequently that I don't know.

Q. You swore to a particular date in 1874. I want to know the reason how you arrived at that date in 1874?

A. Because at that date I considered that the presses, material, office furniture, and things connected with the establishment, without regard to its outside good-will, could not be replaced for less than $50,000 at that time.

Q. On what do you base that opinion, for it does not seem to be supported by the experience of other people at that time; I would like to know where you get the basis of $50,000 as the value of that concern.

A. The basis are these: I know a good office could not be fitted up for anything like that.

Q. Do you know what it cost to start the Herald?

295 A. I don't know of my own knowledge, only from the testimony here given, and that the office and material were sold.

Q. Then, after all, it is nothing but an opinion on your part?

A. It is an opinion, such, that if I had $50,000, and felt disposed to go into the newspaper business at that time, I should have paid that amount, if I could not have got it for a smaller sum.

Q. Do you know what the revenues of that paper were in 1874?

A. No, sir, I do not.

Q. Do you know whether it was paying expenses or not?

A. I do not.

Q. Supposing it was not paying expenses, would the paper be worth $50,000? In other words, does not the value of a paper depend entirely upon its success?

A. Not entirely; everything as a material value, but is greatly dependent upon it; if it was very successful it would sell for $100,000; one-sixth of the "Times" sold for $100,000.

Q. How do you know the "Picayune" sold for $100,000?

296 A. According to public rumor, and I saw evidence of it that satisfied me that it sold for $100,000; at that time a number of citizens purchased it.

Q. In other words, the value of a newspaper is dependent upon its success?

A. The large portion of the value of a newspaper is dependent upon its success.

Q. Therefore, if a newspaper was not paying its expenses, the only value would be the material necessary to carry it on?

A. Yes, sir.

Q. How long does it take to ruin a newspaper badly managed?

A. It does not take more than a few months.

Q. Is it not absolutely necessary to have, first, a good business manager to make a newspaper successful?

A. Yes, sir, I think it does require it.

Q. It is absolutely necessary to have a good business manager to make a newspaper a success.

A. Yes, sir.

297 By Mr. DIBBLE:

Q. You mentioned that the material of the "Republican" sold for a very small price, $3,000, and it had the public favor which the "Picayune" possessed—its advertising patronage, and its good will, and its possession; as a leading newspaper in the South, what would have been its value?

A. It could not be worth less than $70,000; I was negotiating sometime ago for the purchase of the "Republican," and the price fixed was $100,000; that was a few years ago.

Q. What were you doing in 1874; were you connected with any newspaper in New Orleans?

A. Yes, sir; I was connected with the "Times."

Q. The "Times" was wound up in 1873?

A. I did not leave the "Times" until 1875.

Q. This affidavit was made in 1876, but it refers back to 1874?

A. Yes, sir.

Q. Do you remember the position with respect to public

298 favor the Picayune held in the year 1874?

A. The "Picayune" had been to some extent in disfavor up to that time, but from that time forward it took a new departure.

Q. Did not the "Picayune," immediately prior to extraordinary excitement in this city, in September, 1874, from that time forward appear prominently as the organ of the Democratic party?

A. It jumped in with the public sentiment, and the Times went back; the "Times" lost favor and "Picayune" gained it.

Q. Would not that or not increase its value as a newspaper establishment?

A. I suppose it would increase its value.

C. E. WHITNEY, sworn for the complainant, says:

By Mr. DIBBLE:

Question. You are a newspaper man?

Answer. Yes, sir.

Q. How long have you been connected with the press?

299 A. For eight years and a half.

Q. Are you an expert in newspaper matters?

A. I have had close connection with the newspapers in the various departments, and know the value of type, paper, and material.

Q. What was, in your judgment, the value of the Picayune establishment, with its good-will and material, in the latter part of 1874, exclusive of the real estate?

A. I should say it — worth $50,000.

By Mr. MOTT:

Q. Upon what do you base that opinion?

A. Upon the good-will and circulation it had, and its weekly edition. Not long before that time the merchants met and purchased that paper, and laid in a large stock of job type, of fine quality, and fixtures for the press, and turtles and engines.

Q. Don't you know that this paper sold for $20,000 in 1873, on a twelve months' bond?

A. Yes, sir.

300 Q. That it was offered for cash, and no bid on it at all?

A. Yes, sir.

Q. I find that in this affidavit you swore that it was worth $85,000.

A. Yes, sir; I computed in my estimate the real estate, or building.

Q. Do you believe that there was any sane man in New Orleans would give $50,000 for that paper?

A. I don't know any man going to engage in the newspaper business just then; but any man that had $50,000, and managed the paper thoroughly, would make money.

Q. But would any person that had $50,000 give it for that paper at that time?

A. No, sir.

Q. Do you know anybody that would buy it?

A. No, sir.

Q. Is not the value of a newspaper entirely dependent upon its success in the community?

301 A. Entirely. It may change in twenty-four hours.

Q. What do you think the value of the material of that paper would be in cash, independent of any good-will?

A. I would put the material down, the wear and tear of the press and type, at $25,000.

Q. Do you know how old that engine and press is?

A. I know that it is an old press, but a very fine one.

Q. Is it any better than the Republican press, that sold for $3,000?

A. No, sir.

Q. Don't you know that the whole establisment sold for $3,000?

A. Yes, sir.

Q. Is it any better than that of the "Picayune?"

A. Yes, sir.

Q. Why would you give $25,000 for one and only $3,000 for the other?

A. Because one is alive and the other is dead.

Q. Then it is, after all, the operation of a newspaper that gives the value?

302 The good-will.

Q. Would not that value depend upon the fact whether it made money or not?

A. No, sir. A paper may lose money, and yet have a fictitious life about it, notwithstanding the fact that it lost money. It would have a prospective value that depends entirely upon the management of the paper, as one editorial may lose the whole prospect of the paper.

Q. Is not the managing business the whole success of the paper?

A. No, sir; the editorial management must be joined to it.

Q. But both together, it will prosper?

A. Yes, sir.

ALEXANDER WALKER, sworn for the complainant, says:

By Mr. DIBBLE:

Question. How long have you been connected with the newspaper?

Answer. Since 1847, when I acquired an interest in the "Delta."

303 Q. You have already testified in this case that in your judgment the newspaper known as the "Picayune" was worth in 1874 $75,000; will you state more fully the basis of your opinion upon that subject?

A. I heard the testimony of the other witnesses here, and the aggregate amount on that point. The "Times" newspaper, of which I had been the chief writer for some years, when Mr. King died in its moment of prosperity, and I was called upon as an appraiser to appraise. We estimated the property of the "Times," and the good-will was fixed at $50,000 and the newspaper itself at $100,000, which will appear in the mortuary proceedings of Mr. King. A few months afterwards, when it had fallen into the hands of Mr. Weed, and the paper, by virtue of Weed's embarrassments, its political bias, and obnoxious ideas, was seized in bankruptcy. Then it passed into other hands, which elicited the proposition I

make, that the value of the paper, as Mr. Mott suggests,
304 depends upon its administration, and that if the Picayune was in — proper parties, and a good editor and a good business manager, it was worth $75,000; but in the hands of the 240 amateurs who had possession of it, it would depreciate to what it was sold for—$20,000.

Q. You testified that you remained upon the staff of the Picayune until December, 1874?

A. Yes, sir; until the transfer was made.

Q. What was the position of the Picayune as regards public opinion during that year?

A. It had largely increased in public opinion. The Times had retrograded and lost its strength and popularity which it had when I was on it, immediately preceding its misfortunes, and the Picayune gained all that popularity which had been divided between it
and the Times, and subsequently by the Herald; conse-
305 quently, I never thought the paper was stronger than then.

Q. You were a continuous writer for its columns during that year?

A. Yes, sir.

Q. In your judgment it is that the value of a newspaper depends exclusively upon its business management?

A. Yes, sir.

Q. Does it not depend upon a very large extent upon its tone, taking the word in its technical sense.

A. Yes, sir; the only words I considered necessary to state to Mr. Holbrook was to manage the business below, as I did the business above, that is writing for it. The "Picayune" was stronger and had the most competent men to manage it than it had for years, and that I considered increased its value.

DISTRICT OF LOUISIANA, *ss:*

I hereby certify that on the day named in the preceding
306 depositions, I was attended by the said witnesses, as well as the counsel for the said parties; that the witnesses were duly sworn, examined, and their depositions reduced to writing, and that that the signatures of the said witnesses to their depositions were waived by consent of said counsel.

February 13th, 1879.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court.

NEW ORLEANS, *March* 13, 1879.

E. C. HANCOCK *vs.* A. M. HOLBROOK.

Testimony on behalf of complainant resumed this day.

Present: H. C. Dibble, Esq., for complainant; Robert Mott, Esq., for defendants.

JOSEPH HERNANDEZ, recalled on behalf of the complainant,
307 says:

By Mr. DIBBLE:

Question. This subpœna *duces tecum* was served on you?

Answer. Yes, sir.

Q. You now appear to answer *to answer* it?

A. Yes, sir.

Q. Have you in your possession the twelve-month's bond referred to in this subpœna *duces tecum*.

A. I have not it, for as soon as I got served with that subpœna I got the book-keeper to examine among my important papers in the box, and it was not found, so I have not got it.

Q. You were also asked to produce the written assumption or agreement of the late A. M. Holbrook, whereby he bound himself to pay said bond at maturity, and agreed to hold you harmless against loss as surety on the bond?

A. Yes, sir.

Q. Are you able to produce that agreement?

A. No, sir; I have not that document in my possession.

308 Q. You were also asked to produce the written transfer of the Picayune establishment to you on or about the 19th December, 1874, by Mr. Holbrook, assuming to act as the president of the New Orleans Picayune Printing Co.; have you that transfer?

A. No, sir; I don't think I ever had it; I think it was left in the attorney's office; I have no recollection of ever having it.

Q. Do you remember whether the assumption of that bond, and the agreement to hold you harmless was written upon the face of the bond, or was it a separate document?

A. As far as I can recollect I think it was a separate document; that is as far as I can recollect.

By Mr. MOTT, for defendant:

Q. No, sir; I do not; I could not say positively; I have put my clerk to look it up.

309 Mr. Mott, for defendants, states that in answer to the call already filed, he produces the books in court to be filed with the record.

Mr. Dibble offers in evidence the minutes of the board of directors of the New Orleans Picayune Printing Co., as found in the book brought into court by the defendants upon notice, at page 11 to page 16 inclusive, being the minutes of a meeting, which appears to have been held on the 27th January, 1874, and the minutes of the meeting, which appears to have been held on the 14th December, 1874, and of the meeting of stockholders, which appears to have been held on the 22d December, 1874.

Mr. Mott, for the defendant, objects to the offer of the above filing in evidence any portion of the minutes less than the whole, because the call of the complainant is for the production of the minutes of the New Orleans Picayune Printing Co. In an-
310 swer to complainant's call, the defendants produced them,

and the whole should be filed in evidence, said Minute-Book, marked H No. 1.

R. W. HOLBROOK, a witness for the complainant, says:

By Mr. DIBBLE:

Question. You appear in the minutes of the meeting of stockholders, just offered in evidence, to have represented eleven shares of the stock of the New Orleans Picayune Printing Company; at what time did you acquire that stock?

Answer. One share, I acquired on the original organization of the company, and the others I acquired afterwards.

Q. What did you pay for the one share you originally subscribed for?

A. That is put down in the rate there; you will find it on the list of stockholders.

Q. Did you pay any cash at all for it?

A. I did not, at the time.

Q. The share was assigned to you by your brother, the
311 late A. M. Holbrook, at that time?

A. I got it when the company was formed, for services which I was to render.

Q. It was one of the sixty-five shares, which were originally assigned to him?

A. I don't know that; sixty-three were registered against him.

Q. This share was transferred, or placed in your name, by your brother?

A. It was not transferred; it was given to me as one of the original signers.

Q. It was given to you for prospective services. How did you acquire the other ten shares?

A. From Charles T. Howard.

Q. Were they not the ten shares which originally stood in the name of Judge Walker?

A. Yes, sir.

Mr. Mott, for defendants, reserves the right to examine this witness in chief, and waives cross-examination at this time.

312 ALEXANDER WALKER, recalled for the complainant, says:

By Mr. DIBBLE:

Question. It appears from the minutes of the meeting of the stockholders referred to in the testimony of the preceding witness, that ten shares of stock were assigned or stood in the name of R. W. Holbrook, which he testifies had formerly stood in your name; did you ever part with that stock, or transfer it to any one?

Answer. Never.

Q. Was the stock your stock at that time?

A. Beyond a doubt.

Q. Did you ever transfer these ten shares of stock on the books of the company, or authorize them to be transferred to any one?

A. Never.

Q. It appears from the pleadings, the allegation of the bill, and the admission of the defendants, that about the 19th December, 1874, in conformity to a resolution of the board of directors
313 of the Herald Printing Co. that you made a transfer of the New Orleans Picayune Printing Company's establishment, with the newspaper, to A. M. Holbrook, that transfer being part of the transaction whereby the new company was to be organized, and that Mr. Holbrook assumed the payment of the twelve months' bond, and agreed to hold the surety, Joseph Hernandez, on that bond harmless, are you able to remember whether the assumption of the payment of that bond and the agreement to hold the surety harmless were in writing or not?

A. They were in writing, and in the writing of Mr. T. J. Semmes.

Q. Are you able to detail the contents of that document from your memory?

A. The contents of that document I remember from the peculiarity of its phraseology: "in consideration of the assumption by Mr. Holbrook of the $20,000, that bond, and a deposit of
314 securities satisfactory to Mr. Hernandez, that Mr. Holbrook would pay that bond." I, as the president of the Herald Co., transferred the property to Mr. A. M. Holbrook. It was written on a separate piece of paper, and written by Mr. Semmes.

Q. That was about the time the charter was drawn?

A. At the time they were all in there Mr. Mott was attending to the charter on the other side of the table, while Mr. Semmes wrote that document on the other.

Q. That was signed by you and Mr. Holbrook?

A. Yes, sir; signed by me and Mr. Holbrook.

Mr. Mott, for defendants, objects, on the ground that there is not sufficient foundation laid of the existence of any such document, or its loss or destruction, if it ever existed.

315 For the purpose of proving the averments contained in the 5th paragraph of complainant's bill, with reference to the assumption on the part of the late A. M. Holbrook for the payment of the twelve months' bond given for the purchase of the Picayune establishment, Mr. Dibble offers the testimony of the late A. M. Holbrook, given in answers to interrogatories on facts and articles propounded to him in the suit of Wm. A. Weed against The Herald Printing Co., 5676, sixth district court for the parish of Orleans, together with the interrogatories to which the said answers were given.

Mr. Mott, for defendant, objects to this testimony being offered for any partial purpose; if offered at all, it must be offered as a totality, and offered as to the whole case.

In view of the above objection, Mr. Dibble offers the testimony generally, Exhibit H, No. 2 and 2 bis suppl. pet'n and an-
316 swer of A. M. Holbrook, garnishee.

Mr. Dibble, for the complainant, offers the transfer of the Pic-

ayune establishment to Joseph Hernandez, dated the 15th December, 1874, referred to in the bill and answer, Exhibit H, No. 3.

DISTRICT OF LOUISIANA, *ss:*

I hereby certify that on the day named in the preceding deposition I was attended by the said witnesses, as well as by the counsel for the said parties; that the said witnesses were duly sworn and examined, and their depositions were reduced to writing; and that, by consent of the said counsel, the signatures of the said witnesses were waived.

March 13th, 1880.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court.

NEW ORLEANS, *March* 15, 1879.

317 E. C. HANCOCK *vs.* A. M. HOLBROOK.

Testimony on behalf of complainant resumed this day.

Present: H. C. Dibble, Esq., for complainant; Robert Mott, Esq., for defen'ts.

In return to the writ of *subpœna duces tecum* served on George Nicholson filed herewith, marked N, the said Nicholson produces the books called for therein, and they are now filed of record with permission to withdraw them, from time to time, as occasion may require, for use, and at all times, the same, however, to be subject to be produced whenever called for in the proceedings before the examiner, or in court.

Mr. Dibble, for complainant, offers in evidence (to be produced) the mortuary proceedings of the late A. M. Holbrook, Exhibit H., No. 11.

318 Mr. Mott, for defendant, is not prepared to proceed with the cross-examination of Judge Alexander Walker, in consequence of the absence of the record No. 5676 of the sixth district court for the parish of Orleans of Wm. A. Weed, against the Herald Printing Co., taken in court and reduced to writing by the short-hand writer, among which, he is informed, was the testimony of the witness Alexander Walker, and reserves his right to continue the cross-examination at a future day.

Mr. Dibble offers, to be produced, a copy of the pledge recorded in the office of the recorder of mortgages of the parish of Orleans about the date of the 22d December, 1874, given by the late A. M. Holbrook to Charles T. Howard, or Joseph Hernandez—Exhibit H., No. 5.

PETER ST. AMAND, a witness sworn on behalf of complainant, says:

319 By Mr. DIBBLE:

Question. In the minutes of the Board of Directors of the New Orleans Picayune Printing Co., at page 15, where is kept the record of a meeting of stockholders of that company, you appear to have represented at that meeting of stockholders four shares of the

stock of that company, when did you become possessed of these shares?

Answer. Two of them I became possessed of about the beginning of the organization, and the other two, two or three days before the dissolution of the organization.

Q. In the copy of the charter annexed to the bill in this case you appear to have had one share at the signing of the charter, is that correct?

A. Yes, sir.

Q. From whom did you acquire that share?

A. From Mr. Holbrook.

Q. Did you pay anything for it?

A. No, sir; but I gave services for it.

320 Q. It was assigned to you in consideration of services to be rendered.

A. Services that had been rendered, and to be rendered.

Q. In whose name did the other share which you say you had at the beginning originally stand, do you remember?

A. No, sir; I do not.

A. From whom did you acquire it?

A. From Mr. Holbrook, I think; I forget.

Q. Under the same circumstances as the other?

A. Yes, sir.

Q. The two shares that stood in your name a few days preceding the meeting of the stockholders, from whom did you get him?

A. I think it was from—I don't know whether it was Warmoth or Holbrook; I forget.

Q. What did you pay for them?

A. I did not pay anything for these two.

321 RICHARD WEIGHTMAN, sworn for the complainant, says:

By Mr. DIBBLE:

Question. At a former sitting you were asked in regard to a letter which you testified you had received from Mrs Holbrook, now Mrs. Nicholson, have you been able to find that letter since that sitting?

Answer. No, sir; I could not find it.

Q. Have you made search for it?

A. I searched everywhere, and I am certain I destroyed it.

Q. At the time this affidavit was drawn and signed by you, did you have possession of that letter?

A. Yes, sir.

Q. Were the facts set forth in this affidavit obtained from the letter then in your possession?

A. Yes, sir.

Complainant rests his case for the present.

DISTRICT OF LOUISIANA, *ss:*

322 I hereby certify that on the day named in the preceding deposition, I was attended by the said witnesses and the counsel for the parties to said cause; that the said witnesses were duly sworn and examined and their depositions were reduced to

writing, and their signatures to the same were waived by consent of said counsel.

March 15th, 1879.

(Signed) F. A. WOOLFEY,
Comm'r U. S. Circuit Court.

Exhibit, marked "H No. 1," offered in Evidence by Plaintiff, March 13, 1879.

At a meeting of the board of directors of the New Orleans Picayune Printing Co., held at their office, this day, Tuesday, January 27th, 1874, the following-named directors were present: A. M. Holbrook, Alex'r Walker, Peter St. Amand, R. W. Holbrook; absent: E. C. Hancock.

After reading the minutes of the previous meeting and
323 their being approved by the board, the following motion was made by R. W. Holbrook:

Resolved, That article 4th of the by-laws of this corporation be amended by the adoption of the following addition:

And any member who shall be absent without leave for three consecutive meetings of the board after having been notified to attend, shall cease to be a director and his place shall be filled by the other directors from among the stockholders; which was unanimously adopted.

On motion of Alex'r Walker, it was resolved that the president be authorized to consult Messrs. Semmes & Mott as to the proper measures to be taken to defend the suit now pending in the 6th district court relative to the sale of the Picayune and the suit brought by the Picayune Printing and Publishing Co. to annul the sale of said property. Adopted.

There being no further business before the board the meeting was adjourned.

(Signed) R. W. HOLBROOK, *Sec'y.*

324 Approved:

New Orleans, December 14th, 1874.

(Signed) A. M. HOLBROOK,
President.

At a meeting of the board of directors of the N. O. Picayune and Printing Co., held at their office, this day, Monday, December 14th, 1874, the following-named directors were present: Alexander Walker, A. M. Holbrook, P. St. Amand, R. W. Holbrook; absent: E. C. Hancock.

After reading the minutes of the previous meeting, and there being no objections, were approved.

The following resolution was offered by Mr. St. Amand, and seconded by R. W. Holbrook.

Whereas the twelve months bond for the original purchase price of the Picayune Establishment given to the sheriff in the suit of John Phelps *vs.* New Orleans Printing and Publishing Co., No. 4979, sixth district court, amounting to $20,211.38 is about
325 to become due and payable, and

Whereas A. M. Holbrook is unable to pay the same, and whereas this company has not the means to satisfy said bond, and it is just and equitable that this company should not retain the property for which the said bond was given to the detriment of the surety on said bond.

Therefore be it resolved, that in case Joseph Hernandez, the surety on said bond, shall pay the same, the president of this company be and he is hereby authorized to sell and transfer the Picayune establishment and all its property and good will to the said Joseph Hernandez in satisfaction of his claim as surety on said bond.

The vote was taken as follows: P. St. Amand, yea; R. W. Holbrook, yea; A. M. Holbrook, yea; Alexander Walker, nay.

Whereupon the following protest was offered and read by
326 Alex'r Walker and ordered to be spread on the minutes:

Alexander Walker, who voted in the negative on this resolution, offered the following protest, and asked that the same be spread on the minutes.

That the Picayune Printing Company have no liability in the twelve months bond to John Phelps; that it has the power to make title to the property in question, and that the resolution is illegal and invalid, and he hereby enters his protest against the same in behalf of the fifty-five shares in said company which he represents.

There being no further business before the board, the meeting was adjourned.

(Signed) R. W. HOLBROOK, *Sec'y.*

Approved:
New Orleans, December 19th, 1874.
(Signed) A. M. HOLBROOK, *President.*

At a meeting of the board of directors, held this day, Sat-
327 urday, December 19th, 1874, the following named directors were present: A. M. Holbrook, P. St. Amand, R. W. Holbrook; absent, Alex. Walker, E. C. Hancock.

After reading the minutes of the previous meeting, and their being adopted by the board, the following motion was made by R. W. Holbrook and seconded by P. St. Amand.

Resolved, that the directory issue notices to the stockholders to meet on Tuesday, the 22d day of December, 1874, at 12 o'clock, at this office, to dissolve the company and appoint a commission to liquidate its affairs, and transact such other business as may be prescribed to them, adopted.

There being no further business before the board, the meeting was adjourned.

(Signed) R. W. HOLBROOK, *Sec'y.*

Approved:
(Signed) A. M. HOLBROOK, *President.*

328 In pursuance of a special called meeting, notice of which

has been duly given to the stockholders of this corporation assembled this twenty-second December, 1874, at the office of the corporation, No. 66 Camp street, in this city, at 12 o'clock m., and the following shares of stockholders were present and represented:

A. M. Holbrook	63	shares.
R. W. Holbrook	11	"
Richard Weightman	8	"
Peter St. Amand	4	"
Geo. Nicholson	3	"
J. A. Quintero	1	"
R. Fitzgerald	1	"
Total	91	"

Ninety-one shares being represented, and eighteen shares of the issued stock only not being represented.

On motion of Mr. A. M. Albrook, duly seconded by Mr. R. Weightman, Mr. George Nicholson, was appointed chairman.

On motion of Mr. A. M. Holbrook, duly seconded by Mr.
329 R. Fitzgerald, Mr. J. A. Quintero, was appointed secretary.

On motion of Mr. R. Weightman the reading of the minutes of the previous meeting was dispensed with.

Mr. Peter St. Amand introduced the following resolutions, which being seconded by Mr. R. Weightman, were adopted by the stockholders present:

Whereas, in pursuance of a resolution of the board of directors heretofore passed, A. M. Holbrook, president of the company, has sold and delivered the Picayune newspaper and printing establishment, good-will, and property to Joseph Hernandez in payment and settlement of the twelve months bond, on which said Hernandez was surety, in the case of John Phelps *vs.* New Orleans Printing and Publishing Co., 6th district court, parish of Orleans, amounting to $20,211.38.

Resolved, that the stockholders in meeting assembled do hereby ratify and approve said sale and transfer.

330 Resolved, by the stockholders of this company, in meeting assembled, ninety-one shares out of the one hundred and nine shares issued, voting therefor, that this company be now dissolved and put in liquidation, and that a commission consisting of Richard Fitzgerald and R. W. Holbrook is hereby appointed to wind up and liquidate the affairs of this corporation.

On motion of Mr. R. W. Holbrook, seconded by Mr. R. W. Weightman, the meeting then adjourned *sine die*.

(Signed) GEO. NICHOLSON,
Chairman.

(Signed) J. A. QUINTERO, *Sec'y.*

331 *Document marked "H No. 2." Offered in Evidence by Plaintiff, March 13th, 1879.*

WILLIAM A. WEED
vs.
HERALD PRINTING COMPANY, } No. 5676.

To the honorable the judge of the sixth district court for the parish of New Orleans.

The supplemental petition of William A. Weed, plaintiff, respectfully represents:

That he has obtained from the clerk of this honorable court a writ of *fieri facias*, ordering the civil sheriff of this parish to seize and take into his possession the property, real and personal, rights and credits of the defendant in execution, and to cause to be made in the manner prescribed by law, an amount sufficient to pay and satisfy the said writ, viz: Twelve hundred and fifty $\frac{00}{100}$ dollars;

and having good reason to believe that A. M. Holbrook,
332 third person, is indebted unto said defendant, or has property or effects in his possession or under his control belonging to said defendant,

Therefore petitioner prays that said A. M. Holbrook be made garnishee herein, and ordered to answer, under oath, the accompanying interrogatories, and after all due and legal proceedings, condemned to pay the amount of said judgment and costs.

(Signed) VALLÉ J. ROZIER,
Plaintiff for Petitioner.

Interrogatories

To be answered categorically under oath, in writing, and within ten days from service.

1st. Had you, in your hands, or under your control, directly or indirectly, at the time of service of these interrogatories, or at any time since, any money, rights, credits, or other property whatsoever,

belonging or due to the said defendant in execution, or in
333 which said company has or had any interest for the whole, or for a part; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said writ; or if less, to what amount? You being asked and required to make a full disclosure in relation to the same.

2d interrogatory. Were you not, at the time of service upon you of these interrogatories, or since, directly or indirectly, indebted or obligated to the said defendant in execution, for anything or for any sum whatever, whether for yourself alone, or together with others, in consequence of any sale, or exchange, or transaction of any kind whatever, whether the same be due, or to become due, and whether the interests of said defendant in execution be direct or indirect, or be for the whole or a part only, or whether it be by

bill, note, or otherwise; and, if yea, what is the nature, de-
334 scription, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said judgment and costs;

or, if less, what amount? You being asked and required to make a full and detailed disclosure in relation to the same.

3d interrogatory. Have you at any time, since the service of notice of seizure in your hands herein made, directly or indirectly, unto or with the said defendant in execution, any payment or novation, or compromise or arrangement, or given to said company any note or other written obligation, or received from them, directly or indirectly, any receipts or acquittance? And, if yea, state the nature, description, and amount thereof, and the time, place, and circumstances of the same.

Sixth District Court for the Parish of Orleans.

WILLIAM A. WEED
vs.
HERALD PRINTING CO. } No. 5676.

335 Interrogatories to be propounded to A. M. Holbrook, to be answered categorically, under oath, in writing, ten days from service.

4th. Did you have any connection with the Herald Printing Company, a corporation established under the laws of the State of Louisiana; if yea, in what capacity? Were you a stockholder, or interested, directly or indirectly, in said company, in any manner whatsoever, at the time of the service of these interrogatories? If yea, state in what manner, and what interests, direct or indirect, you had in the said company; give full particulars. Were you not a stockholder in said company, or did you not subscribe to stock of said company; if yea, when, and how many shares; who issued to you the said stock in the said company?

5th. At the time the Herald Company purchased the New Orleans Printing and Publishing Company, what interest did you have in the said Herald Printing Company; how many shares did
336 you own, and what was the amount of each share?

6th. Has the Herald Printing Company ever sold its interest in the New Orleans Printing and Publishing Company; if yea, when, where, and to whomsoever sold; give full particulars of said sale, and what was the consideration of the said sale or transfer, in full; who made the purchase from the said Herald Printing Company, and who acted as the agent of the Herald Printing Company?

7th. To whom was the consideration of the said sale of the Herald Printing Company paid to?

8th. If you say you purchased stock in the Herald Printing Company, from whom did you make this purchase, and what was the consideration for the same; if the same was paid, how was it paid, in money, or in notes; if the payment was made in notes, state the amount or amounts, and describe the said note or notes,
337 fully, in all particulars, giving dates, amounts, when payable, to whom payable; if said notes are secured, how secured, whether by mortgage or otherwise?

9th. Did you owe the said Herald Printing Company any-

thing for stock in said company, at the date of the service of these interrogatories on you; if yea, how much do you owe said Herald Printing Company for your unpaid installments on said shares of stock which you hold in said company?

10th. Did not Henry C. Warmoth, on or about the 19th day of December, 1873, in the city of New Orleans, deliver to you a certificate of the Herald Printing Company, whereby it was certified that you were the owner of sixty-five shares in the capital stock of the last mentioned company—said certificate being No. 38; if yea, what was the consideration you paid for the said stock; in
338 what capacity did said H. C. Warmoth hand you said certificate of shares? If you say you paid any consideration for the same, state it fully, and to whom was it paid; if you gave notes for the whole or a part, to whom and for whom did you deliver the same; state the entire history of the transaction—how it was that you became the owner of the said shares of stock, and how you came in possession of the said certificate of shares; did you know in what manner the said Warmoth came into possession of shares; if yea, state the same fully, giving dates and full particulars?

11th. Did you — notes in part payment of said shares; if yea, describe them, and state whether you have ever paid them or any portion of them, and where they are at present, and under whose control; if you say you have paid the installments due on
339 or for said shares of capital stock *stock* in said Herald Printing Company, to whom, when, in what manner, and in whose presence did you pay the same; did you pay the same to the said Warmouth; if yea, in what manner and at what time? Did you not owe the sum of $\$11.250\frac{00}{100}$ to said company for the unpaid installments on said shares of stock; if you say you do not owe any balance for said stock, how can you state that you do not owe the said company for said stock; if you do not owe it to the company to whom do you owe it; if you paid it to Warmoth, or any other person, state how you could make the payment to Warmoth, or any other person?

12th. What have you done with the said certificate of stock above referred? Give a copy of the same.

13th. How can you hold the said certificate of shares in said Herald Printing Company, without paying over to the said
340 company the amount of money to which said shares correspond or amount to; did not the officers or any officer of said company call on you by letter or otherwise, to pay the amount due by you for the said stock to the Herald Printing Company; if you say in writing, furnish a copy of the same.

14th. Was there any arrangement made or entered into between yourself and the stockholders of the Herald Printing Company, previous to or after the sale of Herald Company's interests in the Picayune Publishing Company to the effect that the stock of the Herald Printing Company was to be decreased to one-half the number of shares provided for by the charter of said Herald Printing Company and that the owners of shares of stock in the said Herald Printing Company were to have an interest in the said

Picayune Company to the extent of the value of one-half of
341 the original amount of stock subscribed to and owned by them in the Herald Printing Company; if this was not the arrangement, what was it, and state the same fully and whether this was not a part of the consideration of the said sale above referred to?

15th. Did you not purchase the said certificate of stock above referred to in the Herald Printing Company, being certificate No. 38, for the purpose and in order to give you control of the present Picayune Company?

(Signed) VALLÉ J. ROZIER,
Att'y for W. A. Weed, Plaintiff.

Let this supplemental petition be filed, and let A. M. Holbrook be made garnishee and ordered to answer under oath in writing, within the legal delay, the interrogatories herein.

New Orleans, June 2d, 1874.

(Signed) A. SAUCIER, *Judge.*

342 *Document marked "H, No. 2 bis." Offered in Evidence by Plaintiff. March 13th, 1879.*

In the Sixth District Court for the Parish of Orleans.

WILLIAM A. WEED
vs.
THE HERALD PRINTING COMPANY. } No. 5676.

First excepting that the judgment rendered against defendant is null for want of jurisdiction in the court to render the same, now comes A. M. Holbrook, made garnishee in the above-entitled case, and for answer to the interrogatories propounded to him, says:

1st. No.

2d. No.

3d. No.

4th. No. I never had any connection with the said company except as a stockholder; at about the time the Herald newspaper ceased to be issued, a certificate for sixty-five shares of the full paid stock of the capital stock of that company was handed to me by
H. C. Warmoth in the presence of Alexander Walker, the
343 president of that company; this was done as part of the agreement by which I became the owner of the New Orleans Picayune newspaper establishment, and for the purpose of preventing the Herald Company from publishing a newspaper to rival or compete with the Picayune. I never was, directly or indirectly, interested as a stockholder in the Herald Printing Company for the purpose of maintaining the same as an existing corporation. I did not subscribe for said stock, but the same was transferred to me as full paid stock, and as such I accepted the transfer. I never intended to, nor did I bind myself, to pay anything as a subscriber for said stock.

5th. None.

6th. The Herald Printing Company did transfer to me its bid and

all that it purchased at the sheriff's sale of the New Orleans Picayune Newspaper and Printing Establishment. This transfer was made on the 19th day of December, 1873, by the said Herald
344 Printing Company for the consideration of the assumption by me of the bond for twenty thousand dollars given by that company to the sheriff for the purchase price of the Picayune establishment, and my agreement to hold the surety on that bond harmless, and to give that surety indemnity to his satisfaction that I would so hold him harmless, which I did. In said transfer the Herald Printing Company acted through its president, Alexander Walker, who was thereto authorized by a resolution of the board of directors of the Herald Printing Company, as will be seen by the copy of the resolution hereto annexed and made part hereof, marked H. P. Co., No. 1, and the board of directors was authorized so to act by a resolution passed at the meeting of the stockholders of the Herald Printing Company, as will be seen by a copy
345 of said resolution hereto annexed and made part hereof, marked H. P. Co., No. 2.

7th. The consideration of said transfer having been the assumption of the payment of the bond to the satisfaction of the surety thereon, no money payment was made. I assumed the liability of the Herald Company on said bond as the consideration of the transfer.

8th. I will answer the 8th interrogatory by stating all the facts relative to my acquisition of the Picayune newspaper establishment and the stock of the Herald Printing Company. To induce Joseph Hernandez to become surety on the twelve months bond to be given for the purchase price of the Picayune establishment, the Herald Printing Company through its representative, or the person acting for it in that transaction, agreed and contracted to furnish said Hernandez full and ample security to hold him harmless from his signing the bond, and under said assurance
346 he signed the said bond; but after the bond was executed and the Herald Printing Company in possession of the property so purchased from the sheriff, and the Herald Company had published the Picayune newspaper for a day or two, and had ceased the publication of the Herald newspaper, the said Herald Company found itself unable, with the said stipulation, to indemnify said Hernandez, who insisted on being protected according to the aforesaid agreement under which he signed said bond as surety in this state of affairs, about the 18th or 19th December, 1873, H. C. Warmoth representing to be thereto authorized by the Herald Printing Company, offered to transfer to me the Picayune establishment and all the Herald Printing Company's property, if I would assume and pay the twelve months bond given for the
347 price of the Picayune establishment, and would assume the twelve months bond, hold the surety on that bond harmless to his, the said surety's satisfaction, and also pay Warmoth the sum of ten thousand dollars in my notes to my own order, and by me endorsed at one and two years' date, bearing eight per cent. interest, properly secured. After discussion the proposition was so

modified as to reduce the sum of ten thousand dollars to five thousand dollars in two notes of twenty-five hundred dollars each, to my own order, and thus modified was accepted by me. When Alexander Walker, the president of the Herald Company, appeared with Warmouth to transfer the bid for the Picayune establishment, and produced his authority to act for said Herald Printing Company, all mention of the property of the Herald Company was omitted therefrom; to this I objected, and insisted that a great motive for the purchase on my part was to control the Her-
348 ald newspaper so as to prevent its publication as a rival to the Picayune, when it was stated by Warmoth, and assented to by Alexander Walker, who represented the Herald Company, owed debts which its property must be applied to pay, and if I took all its property I would be called on to pay its debts, which I was not willing to do. Warmoth then proposed to transfer to me in lieu of said property sixty-five shares of the full paid stock of the Herald Printing Company, which he owned; which was, according to his representation and the representation of said Walker, the president of the company, a majority of its stock, and being the holder of this stock, I could prevent the renewal of the publication of any newspaper, or its continuance as a newspaper publishing company. I took the transfer of the Picayune establishment, assumed the twelve months bond given to the sheriff, and received of Warmouth the certificate of the
349 sixty-five shares of full paid stock, which I considered as worthless, except for the one purpose of preventing the publication of a newspaper by that Herald Company. I gave my two notes for the twenty-five hundred dollars each, dated the 19th December, 1873, payable one and two years after date, and handed them to H. C. Warmoth in the presence of Alexander Walker, president of the Herald Printing Company, at the time of the completion of the transfer by which I became the transferee of the Picayune newspaper establishment. It was also understood and agreed, as part of the whole transaction, that when I became the owner of said Picayune establishment I was to transfer the same to a corporation to be formed under the laws of the State for the publication of a newspaper to be known as the Picayune, the stock of which should consist of one hundred and twenty shares, sixty-five of which
350 were to be my property or controlled by me, and the other fifty-five shares to belong to and be divided among the stockholders of the Herald Printing Company all of which stock was to be considered as full paid; such a corporation was to be formed by public act and sixty-five shares of said stock allotted to me and my friend, and the other fifty-five shares thereof were allotted to persons whose names were furnished by Alexander Walker, president, and E. C. Hancock, secretary of the Herald Printing Company, as the stockholders who were entitled to shares from having been stockholders of the Herald Printing Company, the names are as follows: E. C. Hancock, 15 shares; Alexander Walker, 10 shares; Joseph Hernandez, 8 shares; Henry S. McComb, 4 shares; Frank H. Hatch, 1 share, and H. L. Swords, E. Laurence, Pritch-

351 ard & Bickham, W. H. Bell, Wm. Mehle, D. P. Penn, John T. Sinnott, Cyrus Bussey, A. Shultz, Lovell & Bailey, J. Donald, Christ Mehle, and W. P. Harper one share each, and David Bidwell and Thomas Brown two shares each. The said two notes, amounting to five thousand dollars, were delivered by me to H. C. Warmoth, whether he holds them now, I do not know; but I do not owe them and do not intend to pay them, as the consideration for which they were made has entirely failed; that consideration was that the Herald Printing Company's property should not be used for the purpose of publishing another newspaper in New Orleans, but the same should be sold, or so disposed of as to pay the creditors of said company, which agreement has been violated and the said property has been used, and is now used for the printing and publishing of the Bulletin newspaper, now published in New Orleans, to the great injury of myself and the Picayune
352 Newspaper Establishment, and this has been done by the Herald Printing Company in opposition to my wishes, and in violation of the contract made with me. I do not owe and will not pay said notes if I can avoid doing so.

9th. No.

10th. I have explained in my answer to the 8th interrogatory how I obtained the certificate for sixty-five shares of said stock; Warmoth represented that he had the control of the Herald Printing Company as the owner of a majority of the shares of its stock, this representation was not denied by the officers of the Herald Company who were present, they produced the said certificate of stock under his orders. I did not know how Warmoth became in possession of said certificate further than that he represented himself to be the owner of the stock, and ordered the officers of the Herald Company to issue the certificate of stock to me in
353 place of stock owned by him, and as they obeyed him, I had no doubt that he had the authority to do so at the time. I do not know how said Warmoth came in possession of said shares further than that he stated, and the president of the Herald Printing Company assented to the truth of the statement that he, Warmoth, was the owner of eighty shares of the full paid stock of said company which he had owned, and that these sixty-five shares were part of said eighty, so owned by him.

11th. I did not pay, nor do I intend to pay the said notes, as I do not owe the amount of them. I do not know who holds them. I I did not pay for said shares, nor was I to pay for them otherwise than as I have explained in my foregoing answers. I did not owe the said company the sum of eleven thousand two hundred and fifty dollars ($11,250), nor any other sum, for the unpaid install-
354 ment on said shares of stock, nor do I owe it, or any other sum to any one else. The stock of the Herald Printing Company was worth nothing, and I would not have agreed to pay anything for it; what I agreed to pay was for the purpose of preventing the publication of a paper by the Herald people or by others, by the use of the property or materials of the Herald Printing Company; that agreement having been violated, I owe nothing.

12th. I have it, and annexed hereto is a copy, which is marked A. M. H., No. 1.

13th. Because the certificate of stock was delivered to me as full paid stock, on which I was to pay nothing, and for which I would not have agreed to pay anything. A written demand was made on me to pay said stock, I annex it, marked A. M. H., No. 12. I paid no attention to it, the persons who made the demand
355 knew as well as I did that the certificate was given to me as for full paid stock, and that I never contracted to pay anything for the same.

14th. I have answered this interrogatory in my 8th answer. If any reduction was to be made in the amount of stock of the stockholders of the Herald Printing Company it was not communicated to me; as far as I knew no stock was to be reduced but that of Alexander Walker and E. C. Hancock, who were to be reduced so as to give all the other stockholders as many shares of the stock of the Picayune Publishing Company as they had in the Herald Company, and still allow me to be owner of sixty-five shares of stock of that company. The agreement was that I should put in as capital of a corporation the Picayune establishment; that I should have sixty-five shares of the stock of that company full paid; that the stockholders of the Herald Printing Company should have the
356 other fifty-five shares to be divided among them as full paid stock; and they were not to publish the Herald or any other newspaper, nor to permit the materials or property of the Herald Company to be used for any such purpose, but the Herald Company was to go out of existence, and they were to apply the property of the Herald Company as to pay all its debts, which they represented were of such amount and character as to be paid and entirely satisfied from said property; any other disposition of that property was a fraud on the creditors of that company, but I had nothing to do with it.

15th. No.

I desire it to be distinctly understood that I owe the Herald Printing Company nothing, and that I owe H. C. Warmoth nothing, that the contract with me has been entirely disregarded
357 by the Herald Printing Company and H. C. Warmouth, and that the Herald Printing Company had ceased to publish the Herald newspaper previous to the 19th December, 1873, and was not able to continue its publication after it once ceased, and that it transferred its right of property in the Picayune establishment because it was not able to retain it in compliance with the terms by which it acquired the same.

(Signed) A. M. HOLBROOK.

Sworn to and subscribed before me, this twelfth day of June, 1874.

[SEAL.] (Signed) W. L. EVANS,
Second Justice Peace, Parish of Orleans.

Exhibit "H. P. Co., No. 1." Referred to in and attached to the foregoing Answers of A. M. Holbrook.

A meeting of the board of directors of the Herald Printing Company was held this day, Dec. 19th, 1873, at the office of the company, No. 109 Gravier street. Present: Messrs. Walker, Hancock, and Barnes.

358 The following resolution was offered for adoption:

That Alex. Walker, president of the Herald Printing Company, be instructed to convey to A. M. Holbrook the property recently acquired by the company, and known as the Picayune Newspaper Establishment, on the fulfillment by A. M. Holbrook of the conditions prescribed in the meeting of stockholders, held this day, to wit: That A. M. Holbrook assume the cancellation of the bond given by Joseph Hernandez on behalf of this company to the satisfaction of said Hernandez.

On motion the above was unanimously adopted.

(Signed) E. C. HANCOCK, *Sec'ty.*

Exhibit "H. P. Co., No. 2." Referred to in and attached to the foregoing Answers of A. M. Holbrook.

359 Copy of Report of Meeting of Stockholders.

At a meeting of the stockholders of the N. O. Herald Printing Company, convened after due notice, the following resolution was unanimously adopted:

Resolved, That the president and directors of the Herald Printing Company be instructed to sell the property recently acquired by the Herald Printing Company under the judicial order for the sale of the Picayune Newspaper Establishment to A. M. Holbrook, on the terms and conditions following, to wit:

That A. M. Holbrook assume the bond of Joseph Hernandez, recently given by said Hernandez on behalf of this company to the satisfaction of said Hernandez.

Approving the above resolution.

Everybody present.

Exhibit "A. M. H., No. 1." Referred to in and attached to the foregoing Answers of A. M. Holbrook.

360 Copy. Shares, $250 each. No. ——. 65 Shares.

CITY OF NEW ORLEANS, *State of Louisiana:*

THE NEW ORLEANS HERALD PRINTING CO.

This certifies that A. M. Holbrook is the holder of sixty-five shares of the capital stock of the Herald Printing Company, transferable only on the books of the company on surrender of this certificate.

New Orleans, Dec. 19th, 1873.

(Signed) ALEXANDER WALKER, *President.*
EDW. C. HANCOCK, *Secretary.*

Exhibit "A. M. H., No. 2." Referred to in and attached to the foregoing Answers of A. M. Holbrook.

HERALD OFFICE,
NEW ORLEANS, *Dec'b'r* 23, 1873.

A. M. HOLBROOK, Esq.

DEAR SIR: By the stock-book of the New Orleans Herald Printing Company we find that on the 19th of December, 1873,
361 you became a subscriber to sixty-five shares of the capital stock of the said company, and that on the same day a certificate for the same was issued to you, the par value of the shares so subscribed for by you being $16,250. By the charter of the Herald Printing Company it is required that all subscriptions to the capital stock of the company shall be paid for one-half in cash and the other half in notes of the subscribers. In conformity with this requirement of the charter I hereby demand payment for the said charter.

Respectfully yours,
(Signed) E. C. HANCOCK,
Sec'try Herald Printing Company.

Document marked "H, No. 3." Offered in Evidence by Plaintiff March 13th, 1879.

Know all men by these presents, that the New Orleans Picayune Printing Company, in pursuance of a resolution, of which a
362 copy is hereto annexed, has this day sold, and does hereby sell, transfer, and convey unto Joseph Hernandez, of the city of New Orleans, the following-described property:

The New Orleans Picayune newspaper say the printing and job office, good will, materials, paper, engines, and machinery, of all kinds, the office as it now stands, and as it is run from day to day, tools, implements, furniture, and conveniences as now used in either the printing *the printing*, job office, sanctum, or any other department, together with all paper, ink, coal, fuel, oil, desks, tables, library, a complete file of the Picayune newspaper, as far as it is in existence from its first number, all stationery, and all other personal effects connected with or belonging to the establishment. To have and to hold to the said Hernandez, his heirs, executors, administrators, and assigns.

363 This transfer is made for and in consideration of the sum of twenty thousand two hundred and eleven $\frac{38}{100}$ dollars, lawful money of the United States, which has been paid by the said Joseph Hernandez as surety upon a twelve months bond given for the purchase price of the Picayune establishment on the 16th day of December, 1873, in the cause of John Phelps *vs.* The New Orleans Printing and Publishing Company, No. 4979 of the docket of the sixth district court for the parish of Orleans, the payment of which amount by the said Hernandez is hereby acknowledged, and the said A. M. Holbrook, individually, in consideration of the premises, conveys, assigns, and sets over to the said Joseph Hernan-

dez, all right and claim, whether in law or equity, which he, said Holbrook, may have to said property, but the said Holbrook, in making said sale as an individual, hereby gives a quit claim, and in his individual capacity makes no guarantee whatever, and
364 hereby expressly excludes all the guarantees implied by law.

Dated at New Orleans, this 15th day of December, A. D. 1874.

(Signed) A. M. HOLBROOK, *President.*
J. HERNANDEZ.

Witnesses:
CHAS. CONOLL.
P. ST. AMAND.

Attest: B. W. HOLBROOK, *Sec'y.* [SEAL.]

The following resolution was offered by Mr. P. St. Amand, and seconded by Mr. R. W. Holbrook:

Whereas the twelve months bond for the original purchase price of the Picayune establishment, given to the sheriff in the suit of John Phelps *vs.* New Orleans Printing and Publishing Co., No. 4979, sixth district court, amounting to $20,211.38, is about to become due and payable; and

Whereas A. M. Holbrook is unable to pay the same, and
365 whereas this company has not the means to satisfy said bond, and it is just and equitable that the said company should not retain the property for which the said bond was given, to the detriment of the surety on said bond:

Therefore, be it resolved, That in case Joseph Hernandez, the surety on said bond, shall pay the same, the president of this company be, and he is hereby, authorized to sell and transfer the Picayune establishment and all its property and good will to the said Joseph Hernandez in satisfaction of his claim as surety on said bond.

The vote was taken as follows: Yeas, Peter St. Amand, R. W. Holbrook, A. M. Holbrook; no, Alexander Walker. Adopted.

(Signed) A. M. HOLBROOK, *President.*

A true copy from the minutes.
New Orleans, Dec. 14, 1874.

[SEAL.] (Signed) R. W. HOLBROOK, *Sec'y.*

366 In pursuance of a special called meeting, notice of which has been duly given, the stockholders of this corporation assembled, this twenty-second December, 1874, at the office of the corporation, No. 66 Camp street, in this city, at twelve o'clock m., and the following shares of stock were present and represented:

A. M. Holbrook	63	shares.
R. W. Holbrook	11	"
Richard Weightman	8	"
Peter St. Amand	4	"
Geo. Nicholson	3	"
J. A. Quintero	1	"
R. Fitzgerald	1	"
Total	91	"

Ninety-one shares being represented, and eighteen shares of the issued stock only not being represented.

On motion of Mr. A. M. Holbrook, duly seconded by Mr. Weightman, Mr. Geo. Nicholson was appointed chairman.

On motion of Mr. A. M. Holbrook, duly seconded by Mr. R. Fitzgerald, Mr. J. A. Quintero was appointed secretary.

367 On motion of Mr. R. Weightman, the reading of the minutes of the previous meeting was dispensed with.

Mr. Peter St. Amand introduced the following resolutions, which, being seconded by Mr. R. Weightman, were adopted by the stockholders present:

Whereas, in pursuance of a resolution of the board of directors heretofore passed, A. M. Holbrook, president of this company, has sold and delivered the Picayune Newspaper and Printing Establishment, good-will, and property to Joseph Hernandez, in payment and settlement of the twelve months bond, on which said Hernandez was surety, in the case of John Phelps *vs.* New Orleans Printing and Publishing Company, sixth district court, parish of Orleans, amounting to $20,211.38.

Resolved, That the stockholders, in meeting assembled, do hereby ratify and approve said sale and transfer.

368 Resolved by the stockholders of this company, in meeting assembled, ninety-one shares out of the one hundred and nine shares issued voting therefor, That this company be now dissolved and put in liquidation; and that a commission, consisting of Richard Fitzgerald and R. W. Holbrook, is hereby appointed to wind up and liquidate the affairs of this corporation.

On motion of Mr. R. W. Holbrook, seconded by Mr. R. W. Weightman, the meeting then adjourned *sine die*.

(Signed) GEO. NICHOLSON, *Chairman.*

A true copy.
New Orleans, Dec. 22, '74.
(Signed) J. A. QUINTERO, *Sec'y.*

Document marked "H, No. 4." Offered in evidence by Plaintiff March 15th, 1880.

To the honorable the second district court of the parish of Orleans:

369 The petition of Eliza Jane Poitevent, widow of A. M. Holbrook, and of Peter St. Amand, residing in New Orleans, with respect, represents:

That A. M. Holbrook, lately of this city, died at Bladon Springs, in the State of Alabama, on the 3d of Jan'y, 1876; that he left an autographic will, which is now produced, by which petitioners are named as executors and given seizin of his estate.

Wherefore petitioners pray for the probate of said will; for their qualification as executrix and executor; for an order for an inventory, to be made by R. C. Mott, notary public, and for such other and further orders as may be proper.

(Signed) SEMMES & MOTT, *Att'ys.*

Personally appeared George Nicholson, who, being sworn, deposes and says: That Alva Morris Holbrook, lately of the
370 city of New Orleans, died on the 3d of Jan'y, 1876, at Bladon Springs, in the State of Alabama.

(Signed) GEO. NICHOLSON.

Sworn to and subscribed before me, this 6th day of Jan'y, 1876.

(Signed) JOE GARIDEL, *D'y Clerk.*

Let the last will and testament of the deceased be proved before me forthwith.

New Orleans, Jan'y 6th, 1876.

(Signed) A. L. TISSOT, *Judge.*

The will of the deceased having been duly proved, let the petitioners be confirmed as testamentary executors of the deceased, and let letters testamentary issue to them on their complying with the requisites of the law. Let the inventory herein prayed for be taken by R. C. Mott, notary public, in presence of all parties interested, or them duly called, and let Albert Fabre and J. A.
371 Quintero be appointed, sworn, as appraisers to value the property to be inventoried.

New Orleans, Jan'y 7, 1876.

(Signed) A. L. TISSOT, *Judge.*

Document marked "H, No. 4." Offered in Evidence by Plaintiff February 13, 1879.

To the honorable the second district court for the parish of Orleans:

The petition of Peter St. Amand, residing in New Orleans, executor of the last will of A. M. Holbrook, with respect, represents:

That he has caused an inventory of said succession to be made, which he now produces and files herewith.

Wherefore petitioner prays that the said inventory be homologated, and for general relief, &c.

(Signed) SEMMES & MOTT,
Att'ys of Executor.

372 Let the inventory herein taken by R. C. Mott, notary public, and which is hereto annexed and filed, be approved and homologated.

New Orleans, Jan'y 27, 1876.

(Signed) A. L. TISSOT, *Judge.*

Document marked H, No. 5. Offered in Evidence by Plaintiff March 15th, 1880.

Know all men by these presents, that Joseph Hernandez, of the city of New Orleans, has this day sold, and does hereby sell, transfer, and convey unto Alva M. Holbrook, also of said city, the following described property: The New Orleans Picayune newspaper,

say the printing and job office, good will, materials, paper, engines and machinery of all kinds, the office as it now stands, and as it is now from day to day, with all the appurtenances, tools, implements, furniture, and conveniences as now used in the printing job
373 office, sanctum, or any other *other* department, together with all paper, ink, coal, fuels, oil, dishes, tables, library, a complete file of the Picayune newspaper, as far as it is now in existence from its first number, all stationery, and all other personal effects connected with or belonging to the establishment.

To have and to hold to the said Holbrook, his heirs, executors, administrators and assigns.

This transfer is made for and in consideration of the sum of twenty thousand two hundred and eleven $\frac{35}{100}$ dollars, for which the said purchaser, Alva M. Holbrook, has this day made, executed, and delivered his twenty-seven promissory notes to the said Hernandez, bearing even date with this act, drawn to the order of himself, and by him endorsed as follows: Seven notes for eight hundred and fifty dollars each, payable, respectively, December 10, 1875, Jan'y 10, 1876, February 10, 1876, March 10th, 1876,
374 April 10th, 1876, May 10th, 1876, and June 10th, 1876. And four notes for five hundred dollars each, payable, respectively, July 10th, 1876, August 10th, 1876, and October 10th, 1876. And eight notes for eight hundred and fifty dollars each, payable, respectively, November 10th, 1876, December 10th, 1876, January 10th, 1877, February 10th, 1877, March 10th, 1877, April 10th, 1877, May 10th, 1877, and June 10th, 1877. And four notes of five hundred dollars each, payable, respectively, July 10th, 1877, August 10, 1877, September 10th, 1877, and October 10th, 1877. And three notes for eight hundred and fifty dollars each, payable, respectively, November 10th, 1877, December 10th, 1877, January 10th, 1878. And one note for nine hundred and eleven $\frac{35}{100}$ dollars, payable February 10th, 1878.

New Orleans, 22d December, 1874.

(Signed) J. HERNANDEZ.
" A. M. HOLBROOK.

New Orleans, December 24th, 1874.

(Signed) C. DARCANTEL.
375 *D'y Recorder.*

I, the undersigned, recorder of mortgages in and for the parish of Orleans, State of Louisiana, do hereby certify the above and foregoing is a true and correct copy from the record in this office of the purchase of the New Orleans Picayune effected by A. M. Holbrook, as recorded in Book 137, fos. 26 and 27, on the 24th day of December, 1874.

New Orleans, March 3, 1880.

[SEAL.] (Signed) J. G. RICHARDSON, *D'y R.*

376 *Testimony for Complainant. Filed March 25th*, 1880.

United States Circuit Court District of Louisiana.

E. C. HANCOCK *vs.* MRS. A. M. HOLBROOK *et al.*

Testimony taken on behalf of complainant before F. A. Woolfley, United States commissioner, this 13th day of March, 1880.

Present: H. C. Dibble, Esq., for complainant.

And the commission was here opened, but owing to the absence of the solicitor for the defendants, the commision was continued to Tuesday, March, 16th at half past nine a. m.

NEW ORLEANS, *March* 16, 1880.

HANCOCK *vs.* HOLBROOK. } No. 8320.

377 Testimony resumed this 16th day of March, 1880, as per adjournment.

Present: H. C. Dibble, Esq., solicitor for complainant; Robert Mott, Esq., solicitor for defendants.

CHARLES T. HOWARD recalled for complainant.

By Mr. DIBBLE:

Question. You Purchased from Joseph Hernandez the notes given by A. M. Holbrook to him amounting to $27,000, as you stated in in your examination in this case as a witness for the defendants?

Answer. I purchased them from Warmouth.

Q. I find in the testimony of Governor Warmouth in this record, in answer to a question by the solicitor for the defendants as to the value of these notes, that he said "they could not have been worth more than twenty-five cents on the dollar." State what you consider them worth at the time.

378 A. I considered them worth more than I paid for them. They held a mortgage on everything pertaining to the Picayune building. They were worth more than $21,000, or whatever I paid.

Q. He said further that they would not sell in the market for more than twenty-five cents on the dollar. State what you paid for them.

A. I paid the full value, dollar for dollar.

Q. Governor Warmouth, in speaking of the transaction, said further that you "bought the notes simply and solely for the purpose of having the whip hand over to Holbrook and keep the paper from pitching into the lottery—he did not buy it for an investment—he wanted to get Holbrook by the throat, as any creditor does his debtor." State whether his understanding of the transaction was correct or not.

A. I never gave the Governor any reason for that understanding; I bought them as an investment, thinking the paper might
379 get into trouble, and I might be the owner.

Q. Did you consider the investment was a good one?

A. Yes, sir; for the reasons I have stated, that they held a mortgage on the property, and they could not possibly be a bad investment.

Q. Were all these notes paid at maturity?

A. Yes, sir.

Q. Governor Warmoth says he would not give $500 for any paper in New Orleans. State what the Picayune was worth in December, 1874, at the time of the transaction spoken of—just the newspaper alone—without the real estate.

A. I consider $75,000. It was [to] pay me $10,000 a year.

Q. You are a man of wealth and large business experience?

A. I don't know about the wealth, but I have been in business and have had experience.

Q. You have been interested in one or two newspapers?

A. Yes, sir.

380 Q. What do you consider the value of the Picayune, its patronage, influence, good will, and everything, to-day?

A. If I was to buy it to-day, I would give $100,000 for it.

Cross-examined by Mr. MOTT:

Question. Do you mean you would give that for the paper independent of the building?

A. Yes, sir; the paper and its good will. I paid $20,000 for the Bulletin.

Q. Were you not induced to do that when you had the paper to to keep your lottery up?

A. No, sir; I did it more to oblige Mr. Baker. I thought it was worth that much at the time, but I was mistaken.

Q. How much did you lose by that paper?

A. I lost over $25,000.

Q. Did you not lose $50,000?

A. No, sir; I might have lost between $25,000 and $30,000.

Q. Is not the value of a paper entirely dependent upon its management?

A. Yes, sir.

381 Q. And upon its popularity?

A. Yes, sir.

Q. Don't you know that a newspaper is a thing you can lose money on as quick as on anything that a man can undertake to manage?

A. Yes, sir; except a theatre.

Q. And, therefore, the value of a paper is entirely dependent on the people who manage it?

A. In a great measure.

Q. What has been your experience in newspapers; have you made money or lost it?

A. I always lost money. I had no manager.

Q. Would you to-day, if the Picayune was offered for $100,000, pay that price for it?

A. I would pay it on reasonable terms.

Q. What would you make of it?

A. I believe the paper to-day is making $15,000.

Q. Explain what you mean when you say you made $10,000 a year on the Picayune.

382 A. I said they paid me that much.

Q. That was when it belonged to you, you mean? You received from it for the debt due to you over $10,000 a year for a number of years?

A. Yes, sir, that is it.

Q. Did you not have a keeper in charge of the Picayune establishment during the whole time you had a claim against it?

A. I believe so.

Q. The property was pledged to you in consequence of your having bought the claim that was held by Governor Warmouth?

A. I bought everything together.

Q. But there was a pledge?

A. Yes, sir.

Q. Do you know anything of the value of the material of the Picayune newspaper, I mean the machinery, printing presses, and everything independent of the good will?

A. I only have an idea of it.

Q. What is your idea of it?

A. I don't think that the type, presses and other material of that paper could be replaced to-day under $20,000, probably

383 more, but not less than that.

Q. Do you know how old the engine and machinery is there?

A. I do not.

Q. Do you know anything of the price at which the material of the Republican sold for?

A. I do not.

By Mr. DIBBLE:

Q. Speaking of the value of a paper dependent upon its management, I presume you mean to say the editorial and business management?

A. Yes, sir.

Q. Do you know Hancock, the plaintiff in this suit?

A. Yes, sir.

Q. Is he not considered an excellent newspaper man, in the editorial sense?

A. I always considered so. He received large salaries at different times.

Mr. Mott, for defendants, objects to the above answer, as a matter of hearsay and opinion.

384 Mr. Dibble offers in evidence the following letter:

"333 MAGAZINE STREET, *January* 11*th*.

"Mr. RICHARD WEIGTHMAN.

"DEAR SIR: Having been informed by Mr. Holbrook, during his

stay at Bladon Springs, that he had furnished you with a certificate of stock for eight shares in the Picayune Printing Company merely for the purpose of voting at a meeting of stockholders some few months ago, I request you to have the kindness to return the same to me. The certificate, although worthless to you, would assist me in settling the succession. Mr. Nicholson and Mr. Quintero have returned to me the shares they received from Mr. Holbrook at the time which yours were issued.

"Respectfully MRS. A. M. HOLBROOK."

The foregoing letter is produced by the solicitor of the com-
385 plainant in compliance with request made by the solicitor of the defendants, filed and marked H, No. 6.

The solicitor of the complainant makes the statement that at the time of the examination of Richard Weightman he had not found the letter now produced, but that the witness, Weightman, subsequently found it and produced it.

The paper marked Exhibit H No. 7 offered by Mr. Dibble, solicitor for complainant.

Mr. Mott, for defendants, objects, on the ground that it is not pertinent to this case, and that the complainant cannot make evidence for himself by writing letters to the solicitor for defendants.

Mr. Dibble offers it to account for the non-production of the written assumption of the twelve months bond otherwise proven in this case.

Mr. Mott objects to the solicitor for complainant stating it was otherwise proven in this case.

386 The solicitor for the complainant, who has heretofore offered the mortuary proceedings of the late A. M. Holbrook, being No. 38481 of the docket of the second district court for the parish of Orleans, now specially offers the same for the purpose of rebutting the testimony of Peter St. Amand as to the valuation of the Picayune establishment.

Also, specially offers the inventory in the said mortuary proceedings, at the taking of which the said St. Amand was appraiser, from which inventory it appears that the said establishment was valued at $45,000, marked H, No. 8.

The solicitor for complainant now produces and files a document heretofore offered by him, being a certificate from the books of the recorder of mortgages for the parish of Orleans of what purports to be an act of sale, under private signature, of the Picayune establishment from Joseph Hernandez to A. M. Holbrook, to-
387 gether with the certificate and the seal of the recorder, marked H, No. 5.

The solicitor for complainant also offers, for the purpose of rebutting the testimony of H. C. Warmoth, to the effect that he held certain shares of the New Orleans Herald Co., with the power to assign and transfer them, or otherwise use them. And his answers to certain interrogatories propounded to him in the case of W. A. Weed *versus* The Herald Co., No. 5676 of the docket of the sixth

district court, parish of Orleans, together with the interrogatories propounded to him, marked H, No. 9.

ALEXANDER WALKER, recalled for complainant, says:

By Mr. DIBBLE:

Question. Governor Warmoth, I find in his testimony, says that "the sixty-five shares of the stock of the Herald Co. which he transferred to Mr. Holbrook were a portion of a larger num-
388 ber of shares given to him by yourself and by Hancock, the secretary of the Herald Company, for money due him by that company, and given him with the express understanding that he was to use them when necessary." State whether he was authorized to use them in any manner.

Answer. He was not.

Q. For what purpose were these shares placed in his hands?

A. They were deposited with him under an agreement that a pledge should be drawn out, pledging that stock as collateral security, to reimburse him for such advances be might make to the amount of $20,000 to carry on the Herald morning and evening paper.

Q. Was he authorized to assign these shares or to part with them in any manner?

A. No, sir; they were merely deposited with him under a contract, which was afterwards canceled at his own request. That contract was not in writing.

Q. Governor Warmoth swears, in his testimony, that at
389 the time the Herald Co. purchased the Picayune establishment at sheriff's sale, that the Herald Co. was "bursted"—I use his own word—and that it was only kept alive through his efforts; is that correct?

A. It is entirely untrue.

Q. Was the paper at that time doing a good business?

A. As an evening paper, it was doing an excellent business. It never became involved in any liability over its means until under this engagement with Warmoth, and at his instigation they brought out a morning paper, which doubled the expense.

Q. The solicitor for the defendant has offered in evidence a number of judgments rendered against the Herald Co. subsequent to the purchase of the Picayune establishment by the Herald Co., for the purpose of showing, as he states, the insolvency of the Herald Co. Among these judgments is one which was rendered in
390 the sixth district court at the suit of W. A. Weed against The Herald Co. for the sum of $999.68 upon a paper account. State whether that judgment has not been paid to the plaintiff, Weed.

Mr. Mott objects to the question and answer, for the reason that if it was paid, the record is the best evidence.

Mr. Dibble states that the record does not show the payment, and he wants to prove it otherwise.

A. I always understood it was paid.

Q. From whom did you understand it?
A. From Mr. Weed.
Q. The plaintiff in that case?
A. Yes, sir.
Q. Has not Governor Warmoth stated that he paid it?
A. Governor Warmoth, I think, stated that he paid it or bought it.

Q. There was also a judgment offered which was rendered
391 against the Herald Co. in favor of the executors of Freeland, who were third opponents in the case of Houlihan against the Herald Co., in the fourth district court, for over $6,000; state what that was for.

A. That was fer rent to become due. I think it was a lease of two years.

Cross-examined by Mr. MOTT:

Question. You said a while ago that as long as the Herald evening paper was published, it was prosperous, but that afterwards, at the instance of Warmoth, you published a morning paper; did it not get into trouble in consequence of becoming a morning paper?

Answer. It increased its expenses.
Q. And became embarrassed?
A. Not embarrassed.
Q. Did it not owe more money than it could pay?
A. No, sir.

Q. If it did not become embarrassed, or did not owe more
392 money than it could pay, what was the effect?

A. It made us more pressing and urgent on those who owed us the debts due, and also we calculated upon these advances which were to be made by Warmoth. Our creditors did not press us until after the sale and purchase of the Picayune.

Q. After that they pressed you?
A. After the purchase of the Picayune.

Mr. Dibble, for complainant, offers the judgment and the writ of *fieri facias* in favor of the executors of Freeland, for the purpose of showing that there was no rent due by the Herald Co. until the 1st day of February, 1875, marked H, No. 10.

Mr. Dibble also offers in evidence, to be produced, the return of the sheriff in the case of Meyer and Newmeyer against The New Orleans Herald Printing Co., No. 5718 of the docket of the
393 sixth district court, for the purpose of showing that the judgment rendered in that case for $721.25 has been paid.

It is admitted by the solicitor for the defendants that the above judgment was paid by E. C. Hancock, the complainant in this case.

JOHN H. CONNIFF, sworn for the complainant, says:

By Mr. DIBBLE:

Question. You were the plaintiff in the suit against the Herald Co., No. 72294 of the sixth district court, in which a judgment was rendered in your favor for $322? State whether that judgment has been paid.

Answer. It has been paid.

By Mr. MOTT:

Q. Who paid it?
A. Mr. Hancock.

Mr. Dibble offers in evidence the original of an act of sale
394 under private signature, executed by A. M. Holbrook, president of the New Orleans Picayune Printing Co. of the New Orleans Picayune Printing Establishment to Joseph Hernandez, with the documents annexed, being certified extracts from the minutes of the Picayune Co., produced by the witness, Charles T. Howard. Said act of sale bearing date December 15th, 1874, marked H, No. 3.

Also the act of sale under private signature of the Picayune establishment to A. M. Holbrook, executed by Joseph Hernandez, bearing date December 22d, 1874, marked H, No. 11.

Also offers in evidence the original of what purports to be an act of pledge, executed by A. M. Holbrook to Joseph Hernandez, bearing date the 22d December, 1874, to secure the payment of certain notes executed by Holbrook and referred to in the said pledge, together with the assignment of the said pledge by Joseph Hernandez to H. C. Warmouth, on the 23d December, 1874, and
395 the subsequent assignment on the 2d June, 1875, by H. C. Warmouth, to Charles T. Howard, marked H, No. 12.

Also offers in evidence act of pledge dated the 22d December, 1874, executed by Holbrook to Warmouth to secure the payment of certain other notes, amounting to $7,138.62, also executed by Holbrook in favor of Hernandez; and also a certain pencil memorandum on the back of the envelope in which such act of pledge was enclosed.

Mr. Mott objects to pencil memoranda being put in evidence until they are explained.

Explanatory.

H. C. DIBBLE, sworn, says: I am quite familiar with the handwriting of H. C. Warmouth. That memorandum on the back of the envelope in which the last document was enclosed is in
396 the following words: "Pledge of the Picayune establishment to H. C. Warmoth for $7,138.62; the last note, payable on the 10th of November, 1875, not to be recorded." I will further state that I have examined the books of the recorder.

Mr. Dibble further states that he has examined the books of the recorder of mortgages for the parish of Orleans, and that this document was not recorded, although the other pledge of $20,000 was recorded, as shown by the certificate and act filed in evidence.

Mr. Dibble offers this document for the purpose of rebutting the testimony of H. C. Warmoth, to the effect that he was not cognizant of the purposes of Mr. Holbrook to acquire the Picayune establishment by first transferring it to Mr. Hernandez and then to Mr. Holbrook himself.

Mr. Mott objects, first, on the ground that the complainant cannot rebut the testimony of the witness as to any particular
397 point without first having examined him on that point and given him a chance to explain; that it is *ex parte*, and there is nothing to show that the said memorandum ever was known to the defendant; that the *ex parte* memorandum of the complainant cannot be offered in evidence between litigants who are not parties to the memorandum which is attempted to be proved.

Plaintiff offers:

Pledge to H. C. Warmoth marked H No. 13.

Order of subrogation in suit of Houlihan *vs.* Herald Printing Co., No. 42674, 4th district court, marked H, No. 14.

Letter dated March 13th, 1880, from H. C. Dibble to Charles T. Howard, marked H No. 15.

Defendants offer:

Certificate of stock, H. C. Warmoth, "N, No. 12."

DISTRICT OF LOUISIANA, *ss:*

I hereby certify that on the day named in the preceding
398 depositions I was attended by the said witnesses and the counsel for the parties to the said cause; that the said witnesses were duly sworn and examined and their depositions reduced to writing, and their signatures to the said depositions were waived by consent of said counsel.

March 15, 1880.

(Signed) F. A. WOOLFLY,
Comm'r U. S. Circuit Court.

Document marked "H, No. 6." Offered in Evidence by Plaintiff March 13th, 1880.

(N. B.—The said document (H, No. 6,) is the letter of Mrs. A. M. Holbrook to Richard Weightman, which is already transcribed at page 384 of this transcript.)

Document "H, No. 7." Offered in Evidence by Plaintiff March 13th, 1880.

U. S. C. C.

HANCOCK *vs.* HOLBROOK *et als.* } No. 8320.

NEW ORLEANS, *March* 11, 1879.

ROBERT MOTT, Esq., *Solicitor for Defendants.*

399 DEAR SIR: I respectfully give notice that I require the defendants to produce before F. A. Woolfley, Esq., examiner herein, on Thursday, the 13th inst. at 2 o'clock p. m., the following record and documentary evidence:

1st. The written transfer of the New Orleans Picayune Newspaper and Printing Establishment from the New Orleans Herald Printing Company, through Alexander Walker, pres't, to the late A. M. Holbrook, dated Dec. 19th, 1873, together with the written assumption by said late A. M. Holbrook of the payment of the twelve months bond given by the said Herald Company to the sheriff for the purchase of said Picayune establishment, and the agreement of said A. M. Holbrook to hold Joseph Hernandez surety on said bond harmless.

2d. The minutes of the board of directors of the New Orleans Picayune Printing Company.

Respectfully,

(Signed) HENRY C. DIBBLE,
Solicitor for Plaintiff.

400 *Document marked H, No. 8. Offered by Plaintiff March 13th, 1880.*

To the hon. the second district court for the parish of Orleans:

The petition of Eliza Jane Poitevent, wife of A. M. Holbrook, and of Peter St. Amand, residing in New Orleans, with respect, represents:

That A. M. Holbrook, lately of this city, and at Bladon Springs, in the State of Alabama, on the 3d day — Jan'y, 1876, that he left an olographic will, which is now produced, in which petitioners are bound as executors and given seizin of his estate.

Wherefore petitioners pray for the probate of said will for their qualification as executrix and executor, for an order for an inventory to be made by R. C. Mott, notary public, and for such other and further order as may be proper.

(Signed) SEMMES & MOTT, *Att'ys.*

Let the last will of the deceased be proved before me forthwith. New Orleans, January 6th, 1876.

(Signed) A. L. TISSOT.

401 The will of the deceased having been duly proved, let the petitioners be confirmed as testamentary executors of the deceased, and let letters testamentary issue to them on their complying with the requisites of the law. Let the inventory herein prayed for be taken by R. C. Mott, notary public, in presence of all parties interested or them duly called, and let Albert Falve and J. A. Quintero be appointed, sworn, as appraisers to value the property to be inventoried.

New Orleans, January 7th, 1876.

(Signed) A. L. TISSOT, *Judge.*

A true copy.

[SEAL.] (Signed) JOE GARIDEL, *D'y Cl'k.*

Inventory.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this twenty-second day of January, eighteen

hundred and seventy-six, at the hour of two o'clock p. m., by virtue of and pursuant to an order of the honorable the second district court for the parish of Orleans, bearing date the seventh
402 instant, rendered on the petition of Eliza Jane Poitevent, wife of A. M. Holbrook, and of Peter St. Amand, both of this city, praying that the olographic will of A. M. Holbrook, deceased, be probated; that they be qualified as executrix and executor, and that an inventory be made and taken by R. C. Mott of all the property and effects situated in this parish and belonging to the estate of said deceased, the above-mentioned order of the court directing the undersigned notary to make and take the said inventory, duly certified copies of which petition and order of court remain hereto in the margin annexed for reference.

I, Robert C. Mott, a notary public residing in this city of New Orleans, duly sworn and commissioned for this parish of Orleans, State of Louisiana, did, at the hour, and on the day, month, and year first herein written, in obedience to said order of court, and in the presence of the following-named persons, to wit:

Eliza Jane Poitevent, widow of said A. M. Holbrook, executrix, Peter St. Amand, executor; Albert Falve and J. A. Quintero,
403 duly appointed and sworn by the aforesaid order of court, appraisers to value the property and effects belonging to the estate of said deceased, and lastly George Nicholson and P. J. Reilly, competent witnesses, hereto required all of the foregoing named persons, being residents of this city, proceed to the taking of the inventory and appraisement of all the following described and enumerated property and effects in the manner following:

Real Estate.

A lot of ground with three two-story brick buildings, Nos. 186, 188, and 190 Basin street, all having two-story back buildings; said lot measures 52 ft. 4 in. front on Basin st., by a depth of 56 ft. 8 in., and is situated in the square bounded by Lafayette, Basin, Girod, and Franklin streets, in this city, valued by the said appraisers at the sum of four thousand dollars ---------- $4,000 00

2d. A certain lot of ground with the buildings and improvements thereon, &c., in the square bounded by Camp, Natchez, Gravier Sts. to Bank alley, measuring 21 ft. 7 in. front on Camp St., by a depth of 113 ft. 8 in. 4 lines on the side next to lot
404 No. 27, and 113 ft. 6 in. 5 lines on side next to lot No. 25; said property being known as No. 66 Camp st., and No. 17 Bank alley, valued by the said appraisers at the sum of---------- 25,000 00

3d. A certain lot of ground know as No. 25, in same square, and adjoining that above property, measuring 21 ft. 7 in. front on Bank alley, by 48 ft. 9 in. 5 lines bet. par. lines, and known as No. 19 Bank alley, valued by the said appraisers at the sum of-- 5,000 00

4th. The Picayune Printing and Publishing Establishment, presses, type, materials, utensils, job office, furniture, and good will of the New Orleans Picayune newspaper, valued at		$30,000 00
5th. Open accounts due for subscription, advertising, job work, &c., amounting to		15,000 00
6th. Fifty shares of St. Charles Hotel Co. stock, valued at		300 00
7th. Fifty shares of Odd-Fellows' Hall stock, valued at		125 00
8th. Ten shares of Mechanics' and Agricultural Fair Association stock, valued at		30 00
9th. Twenty-five shares N. O. Jackson & G't Northern R. R. stock		18 75
405 10th. One hundred and ten shares of the Canal & Claiborne St. Railroad stock, valued at		82 50
11th. Fifty shares Mechanics' and Traders' Insurance Co. stock	$5,000 00	
On which is paid	1,091 07	
Leaving due 1 Sept., 1875	$3,908 93	
Valued at a nominal valuation.		
12th. Three shares of the Miss. Valley Navigation stock		Worthless.
Twelve shares of the Bellville Iron Works Co. stock,		"
Twenty-five shares of the N. O. Opelousas & Great Western R. R. stock		"
Ten shares Hydro-Carbon Gas Light stock		"
100 shares of the Miss. Valley Levee Co. stock		"
All of the stock under the 12th caption valued by the said appraisers as worthless.		
Total		$79,556 25

And there being nothing else belonging to the estate of said A. M. Holbrook further to be inventoried and appraised, I, the said notary, did close the said inventory, amounting to the total
406 sum of seventy-nine thousand five hundred and fifty-six dollars and twenty-five cents, $79,556.25.

Recapitulation.

Real estate	$34,000 00
Picayune establishment	30,000 00
Open accounts	15,000 00
Stocks	556 25
	$79,556 25

Thus done, and closed the present inventory, at the city of New Orleans, State aforesaid, in the presence of the said witnesses, who have hereto set their hands with the said parties, and me, notary.
Signed in duplicate. Original.

And hereupon the said Mrs. Holbrook declared that the items 4th and 5th are community property.

(Signed) ALBERT FALVE.
PETER ST. AMAND.
GEO. NICHOLSON.
JOSEPH A. QUINTERO.

And the said Mrs. Holbrook, being called upon to sign, declines so to do, assigning no reason therefor.

[SEAL.] (Signed) R. C. MOTT,
Notary Public.

Document marked H, No. 9. Offered by Plaintiff March 13th, 1880.

Sixth District Court for the Parish of Orleans.

WILLIAM A. WEED
vs.
HERALD PRINTING CO. } No. 5676.

407 To the honorable the judge of the sixth district court for the parish of Orleans:

The supplemental petition of William A. Weed respectfully represents—

That on the 9th day of March, A. D. 1874, William A. Weed, your petitioner, presented a supplemental petition to this honorable court, praying that Henry C. Warmoth be made a garnishee in the above-entitled suit, and ordered to answer the interrogatories herein propounded under oath; that the said Henry C. Warmoth has answered the said interrogatories, but that the answers of the said Henry C. Warmoth to the same are not full and sufficient; that William A. Weed, your petitioner, has other additional and further intertogatories to propound to the said Henry C. Warmoth.

Wherefore petitioner prays that he may have leave to file this supplemental petition, and prays that the said Henry C. Warmoth be ordered to answer under oath the following additional interrogatories accompanying the petition.

(Signed) VALLE ROZIER,
Attorney for Petitioner.

408 *Additional Interrogatories*

To be answered categorically, under oath, in writing, ten days from service.

Sixth District Court for the Parish of Orleans.

WILLIAM A. WEED
vs.
HERALD PRINTING CO. } No. 5676.

I. Did you ever have any connection with the Herald Printing Company, a corporation established under the laws of the State of Louisiona; if yea, in what capacity? Were you a stockholder or

interested in the said company in any manner whatsoever; if yea, state in what manner, and what interest, direct or indirect, you had in the said company? Give full particulars. Were you not a stockholder under your name, under an assumed name, or in the name of any other person or interposed person or persons? Were you not, and are you not now still, interested in the said company, directly or indirectly, and were you not so interested at the time of the service of this garnishment process on you, and are you not interested at this time? If you have disposed of your stock in the said company, state what amount of stock you have sold in your own name or in that of another person or other persons,
409 and what amount you paid on the said stock, when, and where.

II. At the time the Herald Printing Company purchased the New Orleans Printing and Publishing Company, what interest did you have in said Herald Printing Company? How many shares did you own in your own name or under or in the name of others? State the same fully, minutely, and what was the amount of each share in said company.

III. Who attended to the purchase of the New Orleans Printing and Publishing Company at the sheriff's sale, made on or about the —— day of ——, A. D. 187—? Were you the person, or did you make the purchase under the name of any other person or persons; if yea, state the name or names of the person or persons? Did you not act as the agent of the Herald Printing Company in the same? Was not the purchase of the New Orleans Printing and Publishing Company made for the account of the Herald Printing Company? What was the price or consid-
410 eration paid at the sheriff's sale? Who paid the same, when, and where?

IV. Has the Herald Printing Company ever sold its types, printing apparatus, fixtures, and all other assets or property, of whatsoever kind or description, it had; if yea, when, where, and to whomsoever the said establishment, or part thereof, was sold? Give the full particulars, and what was the consideration of the sale or transfer, and the nature of the whole transaction in full; who attended to the sale; was there any agent for the Herald Printing Company?

V. What has become of the consideration paid to the Herald Printing Company, or promised to be paid to the said company? Who took the same, or to whom was it paid? How was it applied, to what uses? State the whole transaction of the sale of the said Herald Printing Company; give dates and full particulars.

VI. Were any notes given by the purchaser, or was any note given in part payment of said purchase; if yea, whose note? State the amount or amounts, and describe the note or notes fully, in all particulars, giving dates, amounts, when payable, to
412 whom payable, if notes are secured, how secured, and by whom made? What has become of the said notes?

VII. Did not A. M. Holbrook make the purchase, and what was the consideration of said purchase; and what has become of the said consideration he paid, or promised to pay? Where are the

said notes? Did you not receive and take this note, or these notes, and keep them; if yea, for what purpose or purposes, and by what right did you take the same? What have you done with the said notes? Have you discounted them or received any benefit from the same in any manner whatever? How do you claim to hold the said notes, or to have disposed of them? Were you not simply acting as the agent of the Herald Printing Company, and why did you not turn over the said notes to the said Herald Printing Company? If you have disposed of the said notes, how do you claim you had a right to dispose of the property or assets of the
413 said Herald Printing Company? Give a full account of the matter. Have you ever rendered any account to the said Herald Printing Company of this business; if yea, when, where, and to whom was the account rendered? If not, why did you not render an account to the said Herald Printing Company?

VIII. State whether you ever had any other assets or property belonging to the said Herald Printing Company, or in which said company is or was interested, and have you not now under your control or in your possession said assets; if yea, do not the same amount to fifteen hundred dollars; if less, to what amount?

IX. Have you ever rendered an account of your agency in the sale of the Herald Printing Company to the said company; if yea, what is it, and how do you claim to retain said assets of the company?

X. Did you not know that William A. Weed was a creditor of the said Herald Printing Company?

(Signed) VALLE ROZIER,
Attorney.

Order.

Let this supplemental petition be filed, and let H. C.
414 Warmoth be made garnishee, and ordered to answer under oath, in writing, within the legal delay, the annexed interrogatories.

New Orleans, M'ch 16th, 1874.

(Signed) A. SANCIER, *Judge.*

Answer of Garnishee to Supplemental Interrogatories.

WM. A. WEED
vs.
HERALD PRINTING COMPANY, } 6th Ct. No. 5676.

Answer of H. C. Warmoth to supplemental interrogatories, under order of M'ch 16, 1874.

II. (1.) Yes.

(2.) I was a stockholder.

(3.) I was, as above.

(4.) As a stockholder. I had four shares of stock as subscriber, and eighty shares transferred to me as collateral security; forty by E. C. Hancock, and forty by Alex. Walker, all full paid.

I had no other interest that I know of, except the above.

(5.) I was a stockholder as above, and not otherwise.

415 (6.) I have no [o]ther interest, except as stated above, as I am aware of.

(7.) Of the said eighty shares above mentioned, transferred by Walker and Hancock, I transferred sixty-five shares to A. M. Holbrook. For this stock I had loaned to Walker and Hancock $2,100 last fall, and held it as collateral. The balance of 84 shares, (say 19 shares,) is still in my possession. This was done with the knowledge and acquiesence of Walker and Hancock.

II. (1.) None other than as stated above.

(2.) I have already stated, 4 shares and 80 shares, as above. I believe the Herald stock was 120 shares of $250 each.

III. (1.) I believe Judge Walker attended.

(2.) I made no such purchase in my name, or that of any one else.

(3.) There were no such persons.

(4.) No.

(5.) I believe so.

(6.) I understand a twelve months bond for $20,000.

(7.) I understand the bond was given by the Herald Company, and I suppose it is not yet paid.

416 IV. (1.) I believe the Herald Company has sold the property inquired of; that is, the portion belonging to the Picayune formerly.

(2.) I believe last winter to A. M. Holbrook, in New Orleans.

(3.) I believe this sale of type, &c., was made for the consideration that Holbrook should become responsible for and protect the surety on the said 12 months bond.

(4.) Judge Walker and the board of directors, I believe, attended to that sale.

(5.) The agent in this matter was *was* Judge Walker, president of the company.

V. (1.) If I understand this question, it refers to said sale of type, &c., formerly of the Picayune. When you ask what has become of the consideration, I can only answer that the sale was made, as above stated, upon consideration that Holbrook should become responsible for and protect the surety on the 12 months bond.

(2.) There was, as above shown, no money paid.

417 (3.) This question, of course, requires no answer. There was no money to apply.

(4.) I have given all the particulars I know of the sale.

VI. There was no note given for said purchase of type, &c., as shown above

(2.) No note

(3.) No note was given.

(4.) There were no notes given for said purchase of Picayune type, &c.

VII. (1.) As already stated, Holbrook made said purchase of type, &c., as above.

(2.) The consideration has been disposed of or exists, as above stated.

(3.) There are no notes to my knowledge.

(4.) No.
(5.) I did not take them.
(6.) I never had them.
(7.) No; I have not.
(8.) I do not claim to hold them.
(9.) There were no notes to turn over.
(10.) There were no notes, and I claimed no right.
(11.) I have given all the account I can.
418 (12.) I had no account to render. I was not the president of the company. Judge Walker made the transfer by direction of the company.
(13.) There was no account for me to render.
(14.) Because I had none to render.
VIII. (1.) I have never had any property of the Herald Company in my possession, nor have I any now to any amount.
(2.) I have not had, nor have I, property to any amount of Herald Company.
IX. (1.) I never was such agent, and have no account to render.
(2.) I had no account to render and claim no assets.
X. I did not.

(Signed) H. C. WARMOTH.

Sworn and subscribed before me, this 1st day of April, 1874.

[SEAL.] (Signed) W. L. EVANS,
Second Justice of the Peace.

419 *Document marked H, No.* 10. *Offered by Plaintiff March* 13*th*, 1880.

Writ of Fieri Facias.

The State of Louisiana, Fourth District Court, for the Parish of Orleans.

THOMAS HOULIHAN
vs.
THE NEW ORLEANS HERALD PRINTING CO. } No. 42674.

State of Louisiana to the sheriff of the parish of Orleans, Greeting:

We command you, that by seizure and sale of the property, real and personal rights and credits of the New Orleans Herald Printing Company, in the manner prescribed by law, you cause to be made the sum of sixty-eight hundred dollars, with legal interest on $200, from 1st day of February, 1874, until paid, and on the same amount, from 1st of each month, for thirty-three consecutive months thereafter, until paid, and costs of suits, with lessor's lien and privilege, as claimed, the said amount to be paid out of the pro-
420 ceeds of the property sequestered herein, and now in the custody of the civil sheriff of this parish, by preference to all other claims, excepting only the costs of court; and also the sum of forty-eight $\frac{75}{100}$ dollars costs, as well as your own costs and charges,

to satisfy a judgment rendered against the said defendant, The New Orleans Herald Printing, in our fourth district court for the parish of Orleans, on the 14th day of April, 1874, in favor of John H. Montague and John R. C. Lewis, test'y ex'rs of the last will and testament of John Friedland, deceased, 3d opponents, and how you shall have executed this writ, you make due return to our said court, (within seventy days) according to law.

Witness the Honorable B. L. Lynch, judge of the said court, this 4th day of May, 1874.

[SEAL.] (Signed) J. S. CHALON, *D'y C'lk.*

Received May 4th, 1874, and levied this writ on the property described in the within annexed notice of seizure, and on the
421 5 May, 1874, notified defendants herein of said seizure, in the manner more fully insured in my return on the reverse of the annexed notice, marked A, which is hereof made part.

Made general seizure, in the hands of H. C. Warmoth, and of D. C. Byerly, individually, and as manager of the Bulletin newspaper, as will more fully appear by the within annexed notices, marked B and C, respectively, but of said general seizure, nothing came into my hands.

And no payment being made, and after the legal delay had expired, the said property herein seized was advertised for sale on the 9th day of June, 1874, in the following manner, to wit: By advertisements, composed in English, announcing the sale to take place at the premises, situated on Gravier street, between Camp and Magazine streets, in the first district of this city, on June 20th, 1874, at 10½ a. m. Said advertisements were inserted and published in a paper in the city of New Orleans, to wit, in the New Orleans Republican, from the 9th June to the day of sale, being full ten
422 days from the date of the first notice given in said newspaper. Said advertisements were inserted and published in said newspaper on the 9, 14, and 20 June, 1874, in English.

And after having further complied with and performed all the additional previous legal requisites, and after the said property having been duly appraised, did expose the same at public sale, according to law, at the said premises, on the said 20th day of June, 1874, at 10½ o'clock a. m., having first announced, in a loud and audible voice, the terms and conditions hereinafter expressed, when part of said property was adjudicated to Jos. Raymond, as the last and highest bidder, for ---------- $647 55

And the type was adjudicated to Thos. Houlihan, agent, as the last and highest bidder, for---------- 825 00

Payable cash, and which amounts came into my hands, pending the seizure of the property herein the sums was, by consent of parties, and by the New Orleans Bulletin paper, from whom I received---------- 300 00

Total cash received---------- $1,772 55

423 Out of which I have deducted the charges herein detailed, marked I, amounting to---------- $331 90

And have paid the balance to Finney & Miller, att'ys for pl'ff, in execution herein, which said balance amounts to---------- $1,440 65

And part of said property was not sold for want of bidders, at two-thirds appraisement, and was again advertised for sale on the 23d day of June, 1874, in the following manner, to wit: By advertisements in English, announcing the sale to take place at the said premises, on the 6th day of July, 1874, at 10½ o'clock a. m., said advertisements were inserted and published in English in a paper in the city of New Orleans, to wit, in the New Orleans Republican, from said 23d day of June, 1874, to the day of sale, being full ten days from the date of the first notice given in said newspaper; said advertisements were inserted and published in said newspaper on the 23d, 28th June, 1874, and 5th July, 1874, in English.

And after having further complied with and performed all the additional previous legal requisites, did expose the same at public
424 sale, and according to law, at the same said premises, on said 6th day of July, 1874, at 10½ o'clock a. m., having first announced, in a loud and audible voice, the terms and conditions hereinafter expressed and specified.

When the same was adjudicated to sundry persons for the price and sum of eleven $\frac{3}{100}$ dollars, payable at 12 mos. credit, and but which amount was paid to me in cash, and which I have applied in part payment of charges as herein detailed. And the delay within which this writ is made returnable having expired, I make this my return, still maintaining my general seizure herein made in full force.

And at the time of returning this writ I requested the clerk of this hon. court to furnish me with a copy of the same, together with all my proceedings therein endorsed according to law.

No other property found after due demand of plaintiffs in execution through their attorneys and of defendant.

Returned July 13th, 1874.

425 (Signed) ERNEST RICKER, *D'y Sheriff.*

Notice A, annexed to and made part of foregoing Return.

State of La., 4th District Court for the Parish of Orleans.

THOMAS HOULIHAN
vs.
NEW ORLEANS HERALD PRINTING CO., *fi. fa.* in favor of J. H. Montague *et al.* } No. 42674.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *May* 4, 1874.

To the New Orleans Herald Printing Co.:

Take notice, that I have seized, and in three days from the service

hereof shall proceed to advertise and sell, according to law, the type, chases, presses, and all movable property contained in the premises lately occupied by the Herald Printing Company, situate on Gravier St., between Camp and Magazine Sts., 1st district of this city, to pay and satisfy the writ issued in this case, say the sum of $6,800, with interest and costs, unless the same is immediately paid.

(Signed) ROB'T SWAIN, *D'y Sheriff.*

On May the 5th, 1874, served a true copy of this notice of seizure on the New Orleans Herald Printing Company, de-
426 fendants herein, by personal service on Alexander Walker, president.

(Signed) JAS. BAUDET, *D'y Sh'ff.*

Notice B, annexed to and made part of foregoing Return.

State of Louisiana, 4th Dist. Court for the Parish of Orleans.

THOS. HOULIHAN
vs.
NEW ORLEANS HERALD PRINTING COMPANY. } No. 42674.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *May* 6, 1874.

To Henry C. Warmoth, Esq., and Dan'l C. Byerly:

Please take notice, that, by virtue of a writ *fieri facias* issued in the above mentioned suit, I seize in your hands all goods, chattels, &c., rights and credits, moneys, effects, &c., promissory notes, &c., and other property of any kind which you may now or hereafter have in your possession or under your control belonging to the defendants, Herald Printing Company, which you will hand over to me.

(Signed) ROBERT SWAIN,
Deputy Sheriff.

On the 6th of May, 1874, served a copy of the within notice of seizure on Dan'l C. Byerly, garnishee herein, personally.

(Signed) M. McNAMARA, *D'y Sh'ff.*

427 On May 7th, 1874, served a copy of this notice of seizure on H. C. Warmoth, in person.

(Signed) JAS. BOUDET, *D'y Sh'ff.*

Notice C, annexed to and made part of foregoing Return.

State of La., 4th District Court, Parish of Orleans.

THOMAS HOULIHAN
vs.
HERALD PRINTING CO., J. H. MONTAGUE, *et al.* } No. 42674.

SH'FF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *June 19th*, 1874.

To Daniel Byerly, individually, as manager of the Bulletin newspaper:

Please take notice, that by virtue of a writ of *fieri facias*, issued in the above-mentioned suit, I seize in your hands all the goods, chattels, lands, tenements, rights, and credits, moneys, effects, bills of exchange, promissory notes, or other property of any kind, which you may now or hereafter have in your possession or under your control belonging to the defendants, the Herald Printing Co., which you will hand over to me.

(Signed) ROB. SWAIN,
Deputy Sheriff.

On June 19th, 1874, served a true copy of this notice of
428 seizure on Daniel Byerly, individually, and as manager of the Bulletin newspaper, garnishee herein, in person.

(Signed) JAS. BOUDET, *D'y Sh'ff.*

Document H, No. 11. *Offered by Plaintiff March 13th*, 1880.

Act of Sale.

Know all men by these presents, that Joseph Hernandez, of the city of New Orleans, has this day sold, and does hereby sell, transfer, and convey unto Alva M. Holbrook, also of said city, the following described property:

The New Orleans Picayune newspaper, say the printing and job office, good-will, materials, paper, engines, and machinery of all kinds, the office as it now stands, and as it is run from day to day, with all the appurtenances, tools, implements, furniture, and conveniences, as now used in either the printing, job office, sanctum, or any other, with all paper, ink, coal, fuel, oil, desks, tables, library, a complete file of the Picayune newspaper, as far as
429 it is now in existence, from its first number, all stationery, and all other personal effects connected with or belonging to the establishment.

To have and to hold to the said Holbrook, his heirs, executors, administrators, and assigns.

This transfer is made for and in consideration of the sum of twenty thousand two hundred and eleven $\frac{35}{100}$ dollars, for which the said purchaser, Alva M. Holbrook, has this day made, executed, and delivered his twenty-seven promissory notes to the said Her-

nandez, bearing even date with this act, drawn to the order of himself, and by him endorsed, as follows:

Seven notes for eight hundred and fifty dollars each, payable, respectively, December 10th, 1875, January 10th, 1876, February 10th, 1876, March 10th, 1876, April 10th, 1876, May 10th, 1876, and June 10th, 1876.

And four notes for five hundred dollars each, payable, respectively, July 10th, 1876, August 10th, 1876, September 10th, 1876, and October 10th, 1876.

And eight notes for eight hundred and fifty dollars each,
430 payable, respectively, November 10th, 1876, December 10th, 1876, January 10th, 1877, February 10th, 1877, March 10th, 1877, April 10th, 1877, May 10th, 1877, and June 10th, 1877.

And four notes of five hundred dollars each, payable, respectively, July 10th, 1877, August 10th, 1877, September 10th, 1877, and October 10th, 1877.

And three notes for eight hundred and fifty dollars each, payable, respectively, November 10th, 1877, December 10th, 1877, and January 10th, 1878.

And one note for nine hundred and eleven $\frac{38}{100}$ dollars, payable February 10th, 1878.

New Orleans, 22 December, 1874.

(Signed) J. HERNANDEZ.

Witness: (Signed) A. M. HOLBROOK.

Recorded in mortgage office, Book No. 137, folio 26th.

New Orleans, December 24, 1874.

[SEAL.] (Signed) C. DARCANTEL, *D'y Rec'r.*

Document marked H, No. 12. Offered by Plaintiff March 13th, 1880.

Act of Pledge.

431 Whereas Joseph Hernandez, of the city of New Orleans, has this day sold to Alva M. Holbrook, of the same place, the following-described property:

The New Orleans Picayune newspaper, say the printing and job office, good-will, material, paper, engines, and machinery of all kinds, the office as it now stands, and as it is run from day to day, with all the appurtenances, tools, implements, furniture, and conveniences as now used in either the printing, job office, sanctum, or any other department, together with all paper, ink, coal, fuel, oil, desks, tables, library, a complete file of the New Orleans Picayune newspaper as far as it is in existence, from its first number, all stationery and all other personal effects connected with or belonging to the establishment.

And the said Holbrook has given notes for the purchase price as follows, each dated 22d Dec'r, 1874:

Seven notes of eight hundred and fifty dollars each, payable, respectively, December 10th, 1875, Feb'ry 10, 1876, March 10, 1876, April 10, 1876, May 10, 1876, and June 10, 1876.

432 And four notes of five hundred dollars each, payable, respect-

ively, July 10, 1876, August 10, 1876, September 10, 1876, and Oct'r 10, 1876.

And eight notes of eight hundred and fifty dollars each, payable, respectively, Nov. 10, 1876, Dec'r 10, 1876, Jan'y 10, 1877, Feb'ry 10, 1877, March 10, 1877, April 10, 1877, May 10, 1877, and June 10, 1877.

And four notes of five hundred dollars each, payable, respectively, July 10, 1877, August 10, 1877, Sept'r 10, 1877, and Oct. 10th, 1877.

And three notes of eight hundred and fifty dollars each, payable, respectively, Nov'r 10, 1877, December 10, 1877, and January 10, 1878.

And one note for nine hundred and eleven $\frac{38}{100}$ dollars, payable Feb'y 10, 1878.

And the said property sold has been delivered to the said Holbrook.

Now, therefore, for the purpose of securing the prompt payment of said notes and the interest thereon provided, the said Holbrook doth hereby pledge unto the said Hernandez, his heirs, executors, administrators, and assigns, and doth hereby deliver unto
433 said Hernandez the following-described property:

First. The said New Orleans Newspaper and Printing Establishment, good-will, &c., being all of the same property hereinbefore described as having been sold to said Holbrook.

Second. Seven mortgage notes, made by said A. M. Holbrook, and by him endorsed, amounting in all to the sum of forty-two thousand dollars, as follows:

All bearing date Jan'y 4, 1872; one for $5,000, payable Jan'y 4, 1873, another for $5,000, payable the same day, and three for $8,000 each, payable January 4, 1874, which last five notes bear mortgage on property on Camp street and Bank alley, in this city, by an act of same date, before Mott, notary, recorded in Book 93, folio 558.

And two notes of $4,000 each, bearing same date, payable, respectively, January 4th, 1873, and January 4th, 1874, which last two notes bear mortgage on property on Hevia, now Lafayette, street, by act of same date, before Mott, notary.

It is agreed and understood between the parties to this
434 obligation that in case of the non-payment of any of said notes given for purchase price of said property, as aforesaid, the whole of said purchase price, with interest accrued at time of default, shall become due, and the said pledge, or any person to whom he may transfer the said purchase notes and this obligation, shall have the right to cause all of the said Picayune establishment property hereby pledged to be sold for cash at public sale, without appraisement, on ten days' notice, but the said mortgage notes may be sold at public or private sale, with or without notice, and apply the proceeds to the payment of said purchase notes and interest and costs and charges of sale.

And the said Holbrook hereby appoints the said Hernandez, his executors, administrators, and assigns, his true and lawful agents and attorneys, to sell and convey said property and any necessary

acts in the premises to execute under the conditions above
435 mentioned, satisfying and confirming any and all sales which said Hernandez or his transferee may lawfully make in the premises.

And the said Holbrook declares that the said notes pledged, and the mortgages by which they are secured by said acts of January 4, 1872, before Mott notary, are valid securities, and have never been paid, or in anywise extinguished, being in the hands of said Hernandez at the time of executing this instrument by a former act of pledge from said Holbrook.

The possession of the property of the Picayune establishment pending this pledge, is to be in the hands of a keeper of the pledgee, who it is agreed shall be Mr. Peter St. Amand, or such other person as may be selected by the pledgee or his transferee, with the concurrence of Semmes and Mott, or either of them, and W. W. Howe.

And it is further agreed that the said Holbrook shall insure the said property pledged to the amount of twenty thousand dollars and transfer the policy of insurance to said Hernandez, and shall
436 renew the same from year to year, and pay the necessary premiums for the same, in default of which payment of premiums said Hernandez shall have the right to pay the same, and shall hold the said pledge until reimbursed, the amount so advanced by him for premiums of insurance on said property, as well as the amount of the notes herein described, with all interest thereon.

Dated, New Orleans, Dec'r. 22, 1874.

(Signed)

A. M. HOLBROOK.
J. HERNANDEZ.

NEW ORLEANS, *23d Dec'r*, 1874.

I have transferred and delivered to H. C. Warmoth the notes given for sale this day made by me to A. M. Holbrook, and I hereby also transfer to said Warmoth the pledge and the possession of all the pledged property, mortgage, notes, &c., therein mentioned, conveying to said Warmoth all my right as vendor and as pledgee.

(Signed)

J. HERNANDEZ.

H. C. Warmoth to C. T. Howard.

NEW ORLEANS, LA., *June 2d*, 1875.

437 I have transferred and delivered to C. T. Howard the notes transferred to me by Joseph Hernandez referred to above, and I hereby also transfer to said Howard this pledge, and the possession of all the pledged property, mortgage notes, &c., therein mentioned, conveying to said Howard all my rights as transferred by Hernandez to the same.

(Signed)

H. C. WARMOTH.

Document marked H, No. 13. Offered by Plaintiff March 13th, 1880.

Act of Pledge.

Whereas Alva M. Holbrook, of the city of New Orleans, has this

day given to Henry C. Warmoth, also of said city, his ten promissory notes drawn to his order, and by him endorsed, and amounting in the aggregate to the sum of seven thousand one hundred and thirty-eight $\frac{62}{100}$ — as follows, to wit, each dated 22d Dec'r, 1874.

Five notes for $850 each, payable respectively, February 10th, 1875, March 10th, 1875, April 10, 1875, May 10, 1875, and June 10, 1875.

And four notes for $500 each, payable, respectively, July
438 10, 1875, August 10, 1875, September 10th, 1875, and October 10th, 1875.

And one note for $888.62, payable November 10th, 1875.

Now, therefore, for the purpose of securing the prompt payment of said notes and the interest therein provided, the said Holbrook doth hereby pledge to the said Warmoth, his heirs, executors, administrators, and assigns, and doth hereby deliver unto the said Warmoth the following described property:

First. The New Orleans Picayune newspaper, say the printing and job office, good-will, material, paper, engines, and machinery of all kinds, the office as it now stands, and as it run from day to day, with all the appurtenances, tools, implements, furniture, and conveniences, as now used in either the printing, job office, sanctum, or any other department, together with all paper, ink, coal, fuel, oil, desks, tables, library, a complete file of the Picayune newspaper as far as it is in existence, from the first number, all stationery, and all other personal effects connected with or belonging
439 to the establishment.

Second. Seven mortgage notes made by A. M. Holbrook, and by him endorsed, amounting in all to the sum of forty-two thousand dollars, as follows, all bearing date January 4th, 1872: One for $5,000, payable January 4, 1873, another for $5,000, payable the same day, and three for $8,000 each, payable January 4th, 1874, which last five notes bear mortgage on property on Camp street and Bank alley, in this city, by act of same date, before Mott, notary. Recorded Book 93, folio, 558.

And two notes of $4,000, bearing same date, payable, respectively, January 4, 1873, and January 4, 1874, which last two notes bear mortgage on property on Hevia, now Lafayette, street, by act of the same date, before Mott, notary.

It is agreed and understood between the parties to this obligation that in case of the non-payment of any of said notes, to wit, the ten notes first mentioned in this obligation, the whole of the aggregate amount of said ten notes, with interest accrued at
440 time of default, shall become due, and the said pledgee or any person to whom he may transfer said ten notes and this obligation shall have the right to cause all of the said Picayune establishment property hereby pledged to be sold for cash at public sale, without appraisement, on ten days' notice, but the said mortgage notes may be sold at public or private sale, with or without notice, and apply the proceeds to the payment of said ten notes first mentioned and interest and costs and charges of sale.

And the said Holbrook hereby appoints said Warmoth, his ex-

ecutors, administrators, and assigns, his true and lawful agents and attorneys, to sell and convey said property, and any necessary acts in the premises to execute, under the conditions above mentioned, ratifying and confirming any and all sales which said Warmoth or his transferee may lawfully make in the premises.

And the said Holbrook declares that the said notes pledged and the mortgages by which they are secured by said acts of
441 January 4th, 1872, before Mott, notary, are valid securities, and have never been paid or in anywise extinguished.

The possession of the property of the Picayune establishment pending this pledge is to be in the hands of a keeper of the pledgee, who, it is agreed, shall be Mr. Peter St. Amand, or such other person as may be selected by the pledgee or his transferee, with the concurrence of Semmes and Mott, or either of them, and W. W. Howe.

Dated New Orleans, Dec. 22d, 1874.

(Signed) A. M. HOLBROOK.
(do) H. C. WARMOTH.

H. C. WARMOTH *vs.* C. T. HOWARD.

NEW ORLEANS, LA., *June* 2, 1875.

I have transferred and delivered to C. T. Howard the notes referred to in this pledge, and I hereby also transferred to said Howard this pledge and possession of all the property so pledged, the mortgage notes, &c., therein mentioned, conveying to said Howard all my rights as pledgee.

(Signed) H. C. WARMOTH.

442 *Document marked H, No* 14. *Offered by Plaintiff March* 13*th*, 1880.

State of Louisiana, Fourth District Court for the Parish of Orleans.

Present: The Hon. Wm. T. Houston, judge; Thos. Houlihan.

N. BARRETT, subrogated,
vs.
THE HERALD PRINTING COMPANY. } No. 42674.

On motion of Henry C. Dibble, att'y for E. C. Hancock, and on producing the transfer of the judgment herein by N. Barrett to E. C. Hancock, which transfer is hereto annexed and made part hereof—

It is ordered by the court that said E. C. Hancock be, and he is hereby, subrogated to all the rights, title, and interest of the plaintiff and the subrogee in and to the judgment therein.

I hereby certify the above to be a true and correct copy from the minutes of December 4, 1876.

Clerk's office, March 5th, 1880.

(Signed) GEO. P. CAZELOR,
Deputy Clerk.

443 *Document marked H, No. 15. Offered by Plaintiff March 15th, 1880.*

HENRY C. DIBBLE, ATTORNEY-AT-LAW, 69 CANAL STREET,
NEW ORLEANS, *March* 13, 1880.

CHARLES T. HOWARD, Esq.

DEAR SIR: You have been summoned again to testify in the case of E. C. Hancock *vs.* Mrs. E. J. Nicholson, pending in the circuit court. You will appear, I trust, this afternoon at three o'clock.

In the preparation of my case I discover that there are some documents which I cannot find. On reflection it seems to me that you, as the tranferee of Warmoth and Hernandez, as set forth in your answer in this case, or at least in an affidavit filed, must have in your possession several of these documents.

I shall therefore request you to bring with you to day such papers as you may have relating to the transfer of the Picayune establishment in 1874 and '5, (1) from the company to Hernandez, (2) from Hernandez to Holbrook, and also such pledges as you may
444 have connected with the notes which you acquired from Warmoth.

If you will kindly produce such papers as you have, on this notice, it will save me the trouble of applying to the court for a *subpoena duces tecum*.

Very respectfully,
(Signed) HENRY C. DIBBLE,
Solicitor for E. C. Hancock.

Document marked N, No. 12. Offered by Defendant March 13, 1880.

No. 4. Shares, $250 each. Four Shares.

CITY OF NEW ORLEANS, *State of Louisiana:*

THE NEW ORLEANS HERALD PRINTING CO.

This certifies that H. C. Warmoth is the holder of four shares of the capital stock of the Herald Printing Company, transferable only on the books of the company on surrender of this certificate.

New Orleans, May 4, 1873.

(Signed) ALEXANDER WALKER, *President.*
(Signed) EDW. C. HANCOCK, *Secretary.*

445 *Testimony for Defendants. Filed March 25th*, 1880.

United States Circuit Court for the Fifth Circuit, District of La.

E. C. HANCOCK
vs.
E. J. HOLBROOK *et als.* } No. 8320.

Testimony taken on behalf of defendants before Francis A. Woolfley, United States commissioner, this 4th day of June, 1879.

Present: Robert Mott, for defendants; Henry C. Dibble, for plaintiff.

PETER ST. AMAND, a witness produced, sworn, and examined on behalf of defendants, says:

By Mr. MOTT:

Question. You made this affidavit filed in the suit of Barnes against The Picayune Printing Co., No. 7824 of the docket of this court.

Answer. Yes, sir.

Q. You have had this document read over to you to-day.

A. Yes, sir.

Q. Do you testify to the same facts now marked N, No. 3?

446 A. Yes, sir; I swear to the same facts to-day.

Q. Do you know anything of the value of the Picayune Printing Establishment—of the whole concern as purchased by Holbrook of Hernandez, as it is now?

A. I do not think it is worth more than $25,000.

Q. Has the stock run down?

A. Yes, sir; you may say it is the good-will that is valuable now. The machinery stock is old. It has been running since that time.

Q. Has the paper made money since the time Mr. Holbrook purchased it from Hernandez?

A. I cannot swear to that.

Q. I mean make money after paying the expense of running.

A. I cannot tell, but I think it has.

Q. You heard the estimates of the gentlemen who have been examined that that paper has been worth $50,000, $60,000, $70,000, and $100,000?

A. Yes, sir.

Q. What is their opinion based upon?

A. I do not know.

Q. You have been in the employ of the paper a number of years?

447 A. Thirty odd years.

Q. Have you any ownership or proprietorship in the paper at all?

A. No, sir; only the shares I had at that time.

Q. But in the concern, as it is now?

A. No, sir.

Q. You have testified about the mode by which Mr. Holbrook acquired the paper?

A. Yes, sir.

Q. Do you know Alexander Walker?

A. Yes, sir.

Q. And Mr. Hancock?

A. Yes, sir; but I am not as intimate with Mr. Hancock as I am with Mr. Walker.

Q. Are they men who would be likely to successfully conduct a newspaper?

A. That is a question. They have not been successful with the paper they had—the Herald and Delta—that is, Mr. Walker was on the Delta.

Q. Could Mr. Walker manage a newspaper, financially and editorially, with success?

A. I do not think so.

Q. Is he not notoriously on the other side of the fence,
448 with regard to these matters?

A. That I cannot answer.

Q. Has he been a successful newspaper man?

A. Not as his own paper; he has been employed on newspapers, more or less.

Q. But I mean, when he was managing, as owner; had he capacity to manage his paper successfully as owner?

A. No, sir; it was a failure.

Cross-examination reserved by Mr. Dibble for complainants.

GEORGE NICHOLSON, a witness produced, sworn, and examined for the defendants, says:

By Mr. MOTT:

Question. Are you one of the defendants in this suit?

Answer. I believe so.

Q. Are you not the husband of Mrs. Eliza Jane Holbrook, sued as defendant here?

A. Yes, sir.

Q. She is now Mrs. Nicholson?

A. Yes, sir.

Q. Are you the business manager of the Tribune?

A. Yes, sir.

449 Q. Were you employed on the paper during the year it was conducted by the New Orleans Picayune Printing and Publishing Co?

A. Yes, sir.

Q. You were on the paper during that year?

A. Yes, sir.

Q. Did the paper make any money?

A. It did not. I made money, but not as much as paid expenses.

Q. It did not make money after paying expenses?

A. No, sir. It did not.

Q. Were the expenses moderate?

A. They were as economical as they could be.

Q. Was the paper well managed?

A. Yes, sir; but previously it had been reduced.

Q. The paper had been run down under the management of the amateurs known as the 240?

A. Yes, sir.

Q. And it took a great deal of trouble and expense to build it up?

A. Yes, sir.

Q. Do you know whether Mr. Holbrook had to advance money at any time?

450 A. He had. He was the only one of the stockholders that advanced a single cent.

Q. After he purchased it from Hernandez did it make money for a year or so?

A. No, sir. It did not.

Q. Had not Mr. Holbrook to raise money from his own resources to keep it up?

A. Yes, sir.

Q. What do you consider the value of the paper to-day, good-will and everything?

A. It would depend altogether on its management. If it got into the hands of some parties it would be the same as the Republican. The Republican was new in all particulars, and yet it was sold for $3,000. Its press cost twice as much as this one.

Q. The Picayune concern is pretty much run down and every thing is old?

A. Yes, sir.

Q. At what would you fix the value now; you have heard the testimony given by the various gentlemen as to what the value of the paper was?

A. It would be valueless to some people. It would be
451 worth nothing to parties incapable of managing it. To parties who could conduct it successfully it would be worth a great deal more.

Q. Take it as it is with the risk, and everything else as if it had to be sold now, what would you estimate it to be worth?

A. It would depend altogether upon who would be the purchaser.

Q. Would it be worth $20,000?

A. I should estimate it at that, but not more.

Q. Is it worth any more than when the Herald Co. bought it?

A. Yes, sir; the good-will of the concern, the subscription, and advertising at present is.

Q. It is averred here that the Herald Co. took its advertising list and subscription list into the Picayune, and thereby conferred a value?

A. No, sir; the advertising had to be carried out without any compensation. All the subscriptions that were paid in advance, or were dead-heading. It did not confer any value upon the
452 Picayune.

Q. Do you know anything of the acquisition of the paper by Mr. Holbrook from Hernandez?

A. He purchased it from Hernandez. I was not present when any sale, or anything was made.

Q. What amount of the stock of the Picayune belongs now to the succession of Mrs. Holbrook—how many shares?

A. Some ninety-three, or ninety-five shares.

Q. All the shares, except those claimed by Mr. Hancock?

A. Yes, sir.

Q. Did not Mr. Holbrook buy from Mr. Howard the ten shares of stock claimed by Judge Walker?

A. He did.

Q. Do you know Alexander Walker and Mr. Hancock?

A. I do.

Q. You said a little while ago that the success of a paper depended upon its management?

A. Yes, sir.

Q. Could these gentlemen, in your opinion, successfully manage a newspaper?

453 A. I don't think they could. There are both good writers in their way, but neither of them are capable of conducting a newspaper successfully, either financially or editorially.

Q. They are both able and experienced editors?

A. Yes, sir.

Cross-examined by Mr. DIBBLE:

Question. At what time in the season was it that Mr. Holbrook went on the paper in 1873?

Answer. It would be in December, from the 16th to the 20th or 19th.

Q. At what time did the paper begin to make money?

A. It did not begin to make money to pay expenses for a year.

Q. Did it not begin to make money as early as September or October, 1874?

A. Not for to make up the deficiency during the fore part of that year.

Q. But still it was gaining?

A. It was improving, but not to be self-sustaining. It was better after September than in the summer months.

454 Q. Did not the paper have an extraordinary increase of business immediately after the 15th September, 1874?

A. There was an increase.

Q. Did it not make very serious and important inroads upon the patronage of the Times?

A. Well, in the way of subscriptions.

Q. And in the way of advertisements?

A. Yes, sir.

Q. You said Mr. Holbrook advanced money?

A. Yes, sir.

Q. Did he not borrow upon the credit of the paper?

A. The paper had not any credit.

Q. Did not his position, as editor of the paper, give him credit?

A. No, sir, it did not, but outside of the paper he borrowed money on his own credit.

Q. Were not large deposits made in the bank daily from the receipts of that paper?

A. No, sir; not large daily deposits.

Q. Were not the deposits considerably long?

A. No, sir, not daily. All were weekly deposits. They had to go in to-day and come out to-morrow. You could not bor-

455 row money in that way; you must have some collateral.

Q. Did not Mr. Holbrook borrow money outside the bank as editor of that paper?

A. Not as editor, but as an individual, A. M. Holbrook. I don't

think a connection with the paper would assist in getting credit as a rule.

Q. It might for newspaper purposes?

A. It might for newspaper purposes.

Q. From and after December, 1874, did not the paper make sufficient money over and above the running expenses to meet the notes given to Hernandez for the purchase?

A. No, sir; not up to that time.

Q. How were these notes paid?

A. His notes were paid monthly.

Q. Were they not paid through the office?

A. Paid through the office sometimes, and sometimes not.

Q. Were they not carried on the books of the office?

A. Yes, sir.

Q. Has not the Picayune Newspaper Establishment earned enough money to pay the entire purchase price given to Hernandez?

456 A. Yes, sir; but not during the time these notes were running.

Q. But these notes have been paid through the paper?

A. They were paid sometimes through the paper and sometimes not.

Q. The paper has paid the balance and made it to meet these notes?

A. It has.

Q. What is your interest in the paper now?

A. That is not at issue now; but one-fourth interest.

Q. Would you be willing to take $5,000 for your one-fourth interest?

A. I do not want to sell.

Q. If you were forced to sell, would you consider that a fair price?

A. If I was going to let that paper be conducted by Alexander Walker I would sell it. If I was going to buy it and conduct the paper myself I would give more for it than that.

Q. But if you were forced to sell by unhappy circumstances, would you take $5,000 for it.

A. If I was forced to sell, of course I would.

457 Q. Would you consider it a fair price?

A. For the material. The question is not exactly what the paper is worth, but what makes it that valuable.

Q. The paper is now making money?

A. Yes, sir; the paper is now making money.

Q. It has been steadily increasing in its patronage since 1874?

A. Not so much as recently, more last year than any other.

Q. Is it paying better now than at any previous time?

A. Than at any previous time since the war.

Q. It has a large circulation?

A. Its circulation has been a great deal larger than it is now, but still the circulation is a deal different from what it was when the two hundred and forty had it.

Q. It has the largest circulation in the Southwest?
A. Well they all claimed not.
Q. But in fact it has?
A. I think so.
Q. It has certainly the largest advertising patronage in the Southwest?
458 A. I suppose so.
Q. It had forty columns of advertisements last Sunday?
A. I believe so, but it is a long ways behind the Times in editorials.
Q. The present proprietors of the Picayune have drawn more or less money since the death of Mr. Holbrook?
A. Recently they have drawn some money, but not previous; the fore part of the time they had no chance to draw anything.
Q. Do the books of the company show what amount of money was withdrawn?
A. They show everything; these books are now in the case.
Q. They contain a correct account of all the transactions?
A. Yes, sir; all transactions, personal and public.
Q. You say Judge Walker had parted with his stock that he held in the paper; do you state of your own knowledge?
459 A. I state it of my own knowledge, having paid for the stock and having it in my possession at the time he was acting as a director in the company; the stock was not in his possession.
Q. Have you ever put any value on this newspaper outside of the testimony you have given in this case?
A. Not that I am aware of, except I might to the assessors or something of that kind.
Q. What is it assessed for?
A. I think it is assessed for $15,000.
Q. What is the income of the paper assessed for in the city?
A. I don't know what the income is now.
Q. Was not Judge Walker the principal editorial writer of the Picayune from after the war down to a short time before the sale to a company of citizens, who gave $100,000 to Holbrook for the property and good-will?
A. I cannot answer that question without referring to the books; I know he was employed on the paper, but I cannot say for what length of time.
Q. Was he not the chief editorial writer immediately prior to the time that Holbrook realized $100,000 for the property?
460 A. I think not.
Q. Who was?
A. I cannot say without referring to the books.
Q. You know, as a general fact, that he has been on the paper?
A. I know, as a general fact, that he has been employed on the paper, but that is all.

DISTRICT OF LOUISIANA, *ss:*

I hereby certify that on the day named in the preceding deposi-

tions I was attended by the said witnesses, as well as by the counsel for the parties to the said cause; that the said witnesses were duly sworn and examined, and their depositions were reduced to writing, and that their signatures to the said depositions were waived by consent of said counsel.

June 4, 1879.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court.

Testimony for Defendants. Filed March 25, 1883.

461 United States Circuit Court, District of Louisiana.

E. C. HANCOCK
vs.
ELIZA J. HOLBROOK *et als.* } No. 8320.

Testimony taken on behalf of defendants before F. A. Woolfley, United States commissioner, this 20th day of November, 1879.

Robert Mott, Esq., for defendants; Henry C. Dibble, Esq., for complainants.

PETER ST. AMAND recalled for cross-examination by Mr. Dibble:

Question. You are connected with the Picayune printing establishment?

Answer. Yes, sir.

Q. What is your position on the paper?

A. I have charge of the press department.

Q. Do you know what the earnings of the paper are?

A. No, sir; I cannot tell.

Q. What is its present circulation—the average daily circulation for a week?

A. It runs from seven thousand to thirteen thousand; thirteen thousand on Sundays, some days more; it is according to the daily demands.

462 Q. What is the general average circulation—daily and weekly?

A. About eight thousand, or something like that.

Q. You testify here that in your judgment the paper was not worth more than $25,000.

A. Yes, sir; that is my judgment.

Q. Is that based upon your knowledge of the general annual profits, or a mere general estimate from your knowledge of the business?

A. It is a general estimate of what it formerly did.

Q. You don't know what its earnings are now?

A. No, sir.

Q. You don't know what its earnings were in 1874?

A. No, sir, I think they made a little money, but I am not certain; no, sir, in 1874 they did not make any money, because they did not pay the bonds.

Q. From that time forward they made money?

A. Well, I think they made some money.

Q. But you don't know what amount?

A. No, sir.

463 Q. In this affidavit you assume to give a list of the stockholders of the Herald Company in 1873. State the source of your information.

A. The only source of information I had was from the record when the company was formed, and the formation of the corporation known as the Picayune Printing Company.

Q. You did not have access to the books of the Herald Company?

A. No, sir.

Q. You only know what appeared in the charter of the new printing company?

A. Yes, sir, that is it; I don't know whether Mr. Warmoth had four shares in the company or not, but I believe he had.

Q. How do you know the number of shares owned by Hancock was nine, as stated in your affidavit?

A. That is what he was put down for in the formation of the company; I think he acquired some more from the Tow-boat Company afterwards.

Q. You say he was put down for nine in the new charter
464 according to your recollection?

A. Yes, sir; I think so.

Q. Then your information is simply acquired from this charter of the new Picayune Company?

A. Yes, sir.

Q. You have sworn in this affidavit that at the time the said Herald Company was insolvent and unable to pay its debts, and was entirely without money and pecuniary means or credit, and had not the means of successfully conducting the Picayune Newspaper Printing Establishment; please state how you know that the Herald Company was insolvent at that time.

A. It was only from the parties that I heard it; Mr. Warmoth said he loaned them money to keep them up.

Q. Then your information was merely hearsay?

A. Yes, sir.

Q. You state further that the Herald Company was without cash, and was not able to conduct the paper; how do you know that?

465 A. From the fact that they wanted to quit the business, because they wanted to merge it with the Picayune.

Q. How do you know they were not able to raise the money, had they desired to carry the paper on?

A. That I don't know.

Q. Then your knowledge is simply from what you heard at the time, and is mere hearsay evidence?

A. Yes, sir.

Q. Further on in this affidavit you assume to give an account of an interview between Warmoth and Mr. Holbrook, at which Warmoth proposed to transfer the paper to Holbrook; were you present at that interview?

A. I was at one where he, if I am not mistaken, *he* proposed to me that he was going to do such a thing.

Q. Who else was present at that interview of which you speak in your affidavit?

A. I don't know that there was anybody else.

Q. Was Mr. Hancock present?

A. Not that I know of; no, sir.

466 Q. Did you not swear in the case of Barnes against The Picayune Company that Hancock was present at that interview?

A. No, sir; I wasn't in the case at all. I don't remember it.

Q. Did you not in this affidavit, upon which I am now cross-examining you, swear originally that Hancock was present at that interview?

A. I don't remember it; it is a long time—four years ago.

Q. But you did swear at that time that Hancock was present; do you now reiterate that statement?

A. No, sir; I do not. I have no recollection of him being present, but he signed the charter, a document which amounts to the same thing.

Q. That was some time later?

A. It was only a few days later.

Q. You state in another place further on in this affidavit that subsequent to the interview of which you first spoke, Warmoth produced said Walker and said Hancock to make the transfer; do you mean that Hancock was present when the agreement

467 was made, of which you spoke, with Mr. Holbrook?

A. No, sir; I mean they were present when they were signing the charter, making the transfer by notarial act.

Q. Was not that the only time that you saw Hancock, in the transaction of signing the charter?

A. I think it was.

Q. You again swear that at the time of the transfer the Herald was insolvent; how do you know that fact?

A. I know it from hearsay—from parties interested—that is all. As I said before, it was a well-known fact that they were not paying any one all over town; they were not paying the printers or anybody else; they owed everybody, but still I am not willing to swear they were insolvent.

Q. You proceed further in this affidavit to give a detailed account of certain arrangements and agreements between Holbrook, Walker, and Hancock; state the source of your information as to those agreements?

468 A. The agreement between Holbrook, Walker, and Hancock?

Q. Yes.

A. The only agreement I know was that Holbrook was to have the controlling interest, and they were to lend their aid and assistance in carrying it out. They were to hold positions on the paper.

Q. Were you present when that agreement was made?

A. No, sir.

Q. Then all you know about it is hearsay?

A. Yes, from Mr. Holbrook.

Q. Did you ever see Mr. Hancock, in any interview with Mr. Holbrook, in company with Walker, at any time before the signing of the charter?

A. No, sir.

Q. In this affidavit you then go on to give an account of the execution by Holbrook of two notes for $2,500 each, which you say were delivered to Warmoth, with the consent of Hancock and Walker, as you supposed; were you present when the transaction was made?

A. No, sir; but I know that these notes were given.

Q. How do you know?

469 A. Because Holbrook told me so at the time, and I saw them afterwards; they were given in consideration of the payment of the Herald Company and materials.

Q. Did you see the notes given?

A. No, sir.

Q. Then all you know about it is what Holbrook told you?

A. At that time, but I saw the notes afterwards.

Q. Why do you say that Hancock knew of this transaction?

A. I do not say that, I presume so; you must know something of it, as it was given in payment for the Herald.

Q. You don't know that Hancock knew anything about it?

A. No, sir; not positively, but I presume that he knew.

Q. You don't know that he gave his consent to it?

A. No, sir.

Q. You don't know of any formal transfer to Holbrook of the assets of the Herald Company?

A. No, sir.

Q. You are not, therefore, willing to swear that Hancock did consent to the giving and receiving of these notes?

A. No, sir.

470 Q. You say further, that at the time the said transaction took place the said Warmoth and Walker and Hancock assumed to be the Herald Company, and assumed the right to dispose of its property, rights, and franchises, and professed to be authorized to do so; how do you know that they assumed to have the exclusive control of the Herald Company?

A. They were represented to be the company; that is, Walker and Hancock.

Q. Do you know whether or not they acted under a resolution of the board of directors of the company?

A. No, sir, I do not; I was not present.

Q. You don't know whether they did or not?

A. No, sir; I was not on the board, and do not know of it.

Q. You have no knowledge of the matter otherwise than the general knowledge that they claimed to be the company?

A. Yes, sir; their names were at the head of the paper.

471 Q. Do you know whether Warmoth had any connection with the paper?

A. Only from hearsay; what he said himself.
Q. Did he claim to be one of the board of directors?
A. Yes, sir.
Q. Do you know whether he was or not?
A. No, sir.
Q. When did he claim to be one of the board of directors?
A. I think it was before the sale of the Picayune, at the suit of John Phelps.
Q. You don't know who were the board of directors of the Herald Company?
A. Only from hearsay, that these gentlemen, Walker, Hancock, Warmoth, Barnes, and, I think, a man named Woods; I don't know that Warmoth was on the board, but I presume he was; I cannot swear positively that he was not, but it was supposed he was on the board.
Q. In the next paragraph of this affidavit, you proceed to give an account of an understanding between Holbrook, Walker, and Hancock, as you say, under which it was agreed that Holbrook should have the controlling interest in the new company, and that Walker and Hancock should give their assistance and aid to the new enterprise; how much of this statement do you know to be true of your own knowledge?
472
A. About their giving their aid and assistance?
Q. Yes.
A. Mr. Walker was employed as the principal editor, and Mr. Hancock never did any work at all; he never gave any aid or assistance whatever.
Q. But, I say, how do you know such an agreement was made?
A. That is what Mr. Holbrook told me.
Q. Then your knowledge is merely hearsay?
A. Yes, sir.
Q. You have further sworn in this affidavit that the said Walker and Hancock, contrary to said agreement with Holbrook, aided and countenanced, if they did not actually assist, in getting out a newspaper called the Bulletin, through the use of the effects and the materials of the Herald Company, which they had stipulated should be suppressed, and by the publication of the said Bulletin the earnings of the Picayune were greatly diminished, and there were no profits made thereby, and money had to be borrowed to keep the paper going; please state from your own knowledge alone, in what way Hancock, the plaintiff, aided in getting out the Bulletin with the old Herald material.
473
A. I do not say that Hancock did, but it must have been by his connivance and Walker's together, because these notes that were given to Warmoth for this establishment, so as to suppose it altogether, and not in use as a newspaper.
Q. Why should it have been done by the connivance of Hancock?
A. I don't know; he claimed to be one of the owners of it with Walker; they were both here at the same time.
Q. Do you know whether Hancock was a member of the board of directors of the Herald Company at that time?

A. No, sir.

474 Q. Do you know whether the property was in any way under his control or charge?

Q. At that time?

A. Yes.

A. No, sir.

Q. Do you know whether he aided in any manner in getting out the Bulletin?

A. I don't know that he did, but it looks very much like it.

Q. Now, if Mr. Baker, who was on the Bulletin, should swear positively that Hancock had nothing at all to do with it, would you swear that he had?

A. No, sir; but the presumption is that he was one of the principal owners.

Q. If he had resigned off the board of directors before that event, would you still think he had anything to do with it?

A. No, sir.

A. In detailing the accounts of this affair of the transfer of the paper from Holbrook to Hernandez, you proceed to say, "when the twelve-month bond aforesaid was about falling due, he, that is, Mr. Holbrook, did as any other honest man would do; he gave
475 up the property, etc., to those who had to pay the bond, which the Herald Company was primarily bound to pay, and could not pay, and which he assumed to pay, and could not pay, in consequence of the act of the owners, officers, and principal stockholders of the Herald Company, which had become insolvent and defunct;" did not the Picayune at that time belong to the New Orleans Picayune Printing Company?

A. At which time?

Q. At the time the bond matured?

A. It was the New Orleans Picayune Printing Company.

Q. Had Holbrook any other interest in the Picayune Printing Establishment that the sixty-five shares out of the one hundred and twenty shares of stock, as shown by the books of the new company?

A. No more that I know of.

Q. Did not Mr. Holbrook, as you say in this affidavit, assume the payment of the twelve-month bond given for the paper?

A. Yes, sir.

476 Q. You have stated that Holbrook did as any other honest man would have done in transferring the property back to Mr. Hernandez; please state whether you think, if the president and directors of a stock company take the entire property of the company to pay a debt due to a president of the company, that it is an honest act?

A. The concern was transferred with the consent of the stockholders, three-fourths majority.

Q. Do you think it is an honest act for the president and stockholders to take the property of the company to pay a debt owed by the president?

A. He could not pay the bond; the man that paid it assuredly

had a right to the property; Walker had that privilege, if he could pay the bond, or any other man.

Q. Who owed the bond?

A. Mr. Holbrook.

Q. Was it an honest act for the president and stockholders to take the entire property of the company to pay a debt due by the president?

477 A. I cannot say whether it was honest or dishonest, but it seems to me that the man who pays the money ought to get value received for it. Now, Mr. Warmoth, Walker, or anybody else, could have taken it as well.

Q. How much did the bond call for?

A. $20,000, with some interest on it.

Q. What did they give to pay the bond with?

A. Did who give?

Q. The stockholders and directors and president of the company. What did they give to cancel the bond?

A. They did not give anything that I know of.

Q. Did they not give the Picayune establishment to Hernandez?

A. Yes, sir; they made a sale of it.

Q. Did not Holbrook buy it back again for $32,000 within three days?

A. Yes, sir.

Q. Then you do not think it is an honest act for a president to give the property of the company of which he is president,

478 amounting to $32,000, for a debt of his of $20,000?

A. Yes, sir; but very little money changed hands; if he had the money to pay the bond he would have paid it.

Q. It was $21,000?

A. Yes, sir.

Q. And yet he gave property which the next day he paid $32,000 for?

A. He did not give any property.

Q. Did he not transfer the Picayune establishment to Hernandez to pay the bond?

A. Yes, sir; with the consent of a majority of the stockholders.

Q. He was president of the company, and he consented to it.

A. Yes, sir.

Q. Had there been any meeting of the stockholders at the time the transfer was made?

A. There was a meeting before that, because the transfer could not be made until a meeting was held authorizing the transfer.

Q. The transfer was made primarily under authority of a resolution of the board of directors, and afterwards, as you say,

479 ratified at a meeting of the stockholders.

A. Yes, sir; a meeting of the stockholders was called to ratify the resolution of the board of directors?

Q. The board of directors passed a resolution authorizing Holbrook to give the entire printing establishment to Hernandez to protect him for the payment of the bond?

A. Yes, sir.

Q. And yet Mr. Holbrook, the president of that company, bought the property back in three days for $11,000, more than that bond amounted to.

A. Yes, sir.

Q. You were a member of the board of directors?

A. Yes, sir.

Q. How many shares did you have?

A. I had four shares.

Q. How did you get them?

A. Two of them was value received, and two of them were not.

Q. From whom did you acquire them?

A. Two shares I acquired from Mr. Holbrook, and two I held for voting.

Q. Who gave them to you for voting purposes?

A. I forgot now who it was.

480 Q. Did you pay anything for either one of the shares?

A. I rendered services in different ways for two shares?

Q. What services?

A. I advanced money and loaned money.

Q. To whom?

A. Mr. Holbrook; I endorsed notes for him, and other little private services.

Q. In this account that you have given of this transaction, by which Hernandez restored the property to Mr. Holbrook, state how much you know of your own knowledge.

A. There was nothing in it, only that he gave notes for $27,000, I think.

Q. Did you see it done?

A. Yes, sir; I saw him sign the notes; $500 some months, and $800 other months; there was $5,000 paid in two notes of $2,500 each, making in all $32,000; that was all the money that was paid in cash.

By Mr. MOTT:

481 Q. To commence where he ends, I want to know whether, when Mr. Holbrook bought the Picayune establishment from Mr. Hernandez, was not Mr. Hernandez and Warmoth at the negotiation?

A. Yes, sir.

Q. And were not you there?

A. Yes, sir.

Q. Was not a portion of the price to be paid on long time, payable monthly?

A. Yes, sir.

Q. Running through years?

A. Yes, sir; three years.

Q. Payments some months were $500, and some months $800?

A. Yes, sir.

Q. The summer months, $500, and the winter months, $800?

A. Yes, sir.

Q. And was not Holbrook required to put in that price the $5,000 which he had previously given in two notes of $2,500 each?

A. Yes, sir.

Q. They went in to make up the $27,000?

A. Yes, sir.

Q. The $5,000 embraced in the two notes that Warmoth had previously held went in to make up the price, $32,000?

A. Yes, sir.

482 Q. The $27,000 was given in notes running a long time, and the $5,000 was given in cash?

A. Yes, sir.

Q. That is the way Holbrook got possession of the property as owner?

A. Yes, sir; that is it.

Q. Had not the bond which had been given in the case of John Phelps against the Picayune matured about this time?

A. Yes, sir.

Q. Did Hernandez take it up and produce it there in his hand?

A. Yes, sir; I saw it.

Q. And therefore the whole concern owed Hernandez the amount of that bond?

A. Yes, sir.

Q. Was not the Herald Company the first party that signed that bond? Was it not the bond that the Herald Company signed by Alexander Walker, president?

A. Yes, sir.

Q. And Joseph Hernandez as surety?

A. Yes, sir.

Q. And therefore the Herald Company was liable on that
483 bond, although Holbrook assumed to pay it.

A. Yes, sir; I was there at the time when the sale was made from Hernandez to Holbrook; I was there because I had given the check myself.

Q. When Hernandez acquired that property from the New Orleans Picayune Printing Company, did he not hold the bond of the Herald Company for $21,000?

A. Yes, sir.

Q. Did you you not see him have the bond in his hand?

A. Yes, sir; he went and brought the bond to your office; he went into the bank and paid it.

Q. When the Picayune Printing Company was formed, was not a list of the stockholders brought there by Warmoth or Walker, or some of the parties represented, to show who they were?

A. Yes, sir.

Q. Was not the Picayune Printing Company formed from the stockholders of the Herald Company, with the exception of Warmoth, whose stock was put in the name of Hernandez?

484 A. Well, I think so; I know Heraandez had eight shares; I don't know whether Warmoth transferred them or not.

By Mr. DIBBLE:

Q. You speak of the notes that were given when the property was restored by Hernandez to Holbrook; what interest did these notes bear?

A. I don't know. Which notes, the $27,000?

Q. Yes.

A. Six per cent.

Q. You mentioned that at the time that Mr. Holbrook or Mr. Hernandez—that Mr. Hernandez re-transferred the paper to Mr. Holbrook, that Mr. Hernandez had taken up the twelve months bond as the surety on it, and that he produced the bond at Mr. Mott's office?

A. Yes, sir.

Q. Showing that he had paid the bond?

A. Yes, sir.

Q. Now, at that time did not Hernandez have in his possession collateral securities belonging to Holbrook, to secure him against that bond?

A. Not that I know of.

485 JOSEPH HERNANDEZ, sworn for the defendants, says:

By Mr. MOTT:

Question. You were made a defendant in the suit of Alexander Walker, Holbrook, and Warmoth, No. 7285, sixth district court for the parish of Orleans?

Answer. Yes, sir.

Q. You filed an answer in that suit, the substance of which is narrated in the exhibit annexed to your present deposition, marked N, No. 10?

A. Yes, sir.

Q. In this transaction were there any securities given to you for the purpose of keeping you harmless, given by Holbrook?

A. Yes, sir.

Q. Do you know what they were?

A. Some mortgage notes, I remember.

Q. Can you describe them?

A. Well, I don't know; I think they were mortgage notes on the property on Camp street, and other notes where the mortgages were on property on the Basin or some where back there.

Q. Were they first, second, or third mortgages?

486 A. I don't know; I never had them examined.

Q. What did you do with them?

A. When I transferred the property to Holbrook or Warmoth, I don't remember which, I turned over all the papers connected with it.

Q. To whom?

A. I think I gave them to Warmoth.

Q. And that under your connection with the whole thing?

A. Yes, sir.

Mr. Dibble reserves the right to cross-examine this witness.

Statement of H. C. Warmoth.

In December, 1873, the Picayune Newspaper and Printing Establishment was advertised to be sold by the sheriff in the suit of John Phelps *vs.* the corporation of the same name, and it was understood that the same would be sold on twelve months bond for whatever it would bring. The Herald Printing Company,
487 of which Alexander Walker was president, and E. C. Hancock was secretary, was then publishing a newspaper called the Herald, desired to purchase the Picauyne establishment, and Alexander Walker, its president, applied to me to aid the Herald Company to make the purchase, which I undertook to do, by agreeing to furnish satisfactory security to sign the twelve months bond; the assurance being given me, at that time, by the president of the Herald Company that the bond should be provided for at maturity, and that the security on the bond should be held harmless. Under this arrangement the Herald Company purchased the Picayune establishment for twenty thousand dollars or thereabouts, and I induced Joseph Hernandez to sign the twelve months bond as security. The president of the Herald Company assured Hernandez, at the time that he should be held harmless as security on said bond.

The Herald Company took possession of the Picayune, and
488 published the same for a few days, when a corporation was formed called the Picayune Printing Company, which took charge of and published the same for about a year.

The Herald Company was composed of various stockholders, of which I was one for four shares. That company borrowed money of me to enable it to publish its paper and to exist. At the time of its purchase of the Picayune it owed me about twenty-five hundred dollars cash. At the time I consented to secure the payment of the bond it was proposed by Alexander Walker, and agreed to by all parties interested, that A. M. Holbrook, who had been a successful manager of a newspaper, should be brought into the concern and have the principal management of the business.

This ultimately resulted in the formation of the corporation known as the New Orleans Picayune Printing Company, in
489 which Mr. Holbrook was assigned sixty-five shares of stock, with the intent to give him the controlling power in the management of said newspaper, the whole number of shares being one hundred and twenty, and two of Mr. Holbrook's shares were put in the name of two of his friends that they might be members of the board of directors, and the other two directors were to be Alexander Walker, the president, and E. C. Hancock, the secretary of the Herald Company.

The stockholders of the Herald Company were to compose and be the stockholders of the New Orleans Picayune Printing Company, and they were so, except myself, my stock being put in the name of Joseph Hernandez, and some others had their stock put in the name of E. C. Hancock.

In the negotiations with Mr. Holbrook, spoken of above, it was agreed that he, Holbrook, should assume the aforesaid twelve

months bond and put the property into the new corporation as the capital stock thereof. It was also agreed that the Herald
490 newspaper should be suppressed, for which purpose Mr. Holbrook insisted that all the property thereof should be transferred to him. This could not be done, as he refused to assume the debts of that concern. I then proposed to transfer to him sixty-five out of the one hundred and twenty shares of the stock of the Herald Company, which stood in my name, and for which I had the certificate, which would give him the controlling power in that corporation and insure the suppression of the Herald newspaper, which was done. These sixty-five shares of Herald Company stock were part of a large number given to me by Walker, the president, and Hancock, the secretary, to secure me for money due me by that company, and given me with the express understanding that I was to use them when necessary, and I thought this as necessary an occasion as could occur; the Herald Company stockholder being, as I thought, greatly benefited thereby, as the stock
491 had no value for any other purpose that I knew of. The Herald Company was undoubtedly insolvent; it was unable to pay me the money it owed me and those other debts which it were unable to pay, but some of which I subsequently paid myself and was subrogated and which it never did pay.

That as the Herald Company owed me a large amount of money which it was unable to pay, and as I was working in its interest, I required Mr. Holbrook to give me his two notes for twenty-five hundred dollars each for my own use and benefit to re-imburse my debt of $2,500, or thereabouts, and to pay for my services, which was done. The notes were at twelve months' time and not paid at maturity, and were not given for any property, stock, or rights of the Herald Company, but to me alone.

When the aforesaid twelve months bond was about falling due, in December, 1874, Mr. Holbrook informed me that he could not pay it. He and Hancock and Walker, who were by agreement to be managers and editors of the Picayune Newspaper under
492 the control of Holbrook, had disagreed. Each one wanted to have the whole control of the editorial department. In consequence of this Hancock did not give the aid which was expected, nor the countenance and assistance which was so necessary to the success of the paper.

He was an able and influential newspaper man, and his defection was a serious drawback to success, and the enterprise eventuated in a failure.

After Holbrook advised me that he could not pay the bond, I informed Alexander Walker, president of the Herald Company, of that fact, when he stated that he knew of no means by which the said bond could be paid; I told him that the bond must be paid and that the property acquired through the execution of the bond must be applied to its payment, and that Mr. Holbrook had recognized the propriety of such an appropriation, and had agreed to do all in his power to that end, and would surrender the
493 property itself, which he did. And afterwards I stated to

Mr. Walker that if he, or any of his friends, would pay the bond they should have the property, namely, the Picayune establishment.

At one time he said he would pay the bond and take the property, which he never did. Mr. Hancock could have had the same privilege, for all that I wanted was to find somebody to pay the debt and take the property. Mr. Hernandez paid the bond, and the property was transferred to him.

I furnished Mr. Hernandez the money, and subsequently, in December, 1874, failing to find a purchaser, the property was sold to A. M. Holbrook, individually, for about twenty-seven thousand dollars, on long time, payable in monthly installments, running through a period of some years. The payment of the notes given were secured by a pledge of the property and sundry mortgage notes, which were second and third mortgages on property in New Orleans, which was not worth more than enough to pay
494 prior incumbrances thereon, and were of little or no value.

After holding these notes for some time, I sold them to Chas. T. Howard, and delivered to him all the securities that I held. Mr. Hernandez acted in the matter at my request, and I felt bound to protect him for his suretyship, which had been entered into as an act of friendship without remuneration.

The two notes previously spoken of of Mr. Holbrook, for twenty-five hundred dollars each, were paid by Mr. Holbrook at or about the time of the purchase of the Picayune concern of Mr. Hernandez.

H. C. WARMOTH, sworn and examined on the foregoing statement before F. A. Woolfley, United States commissioner this 20th day of December, 1879.

Present: Robert Mott, for defendants; Henry C. Dibble, for complainant.

Cross-examined by Mr. DIBBLE:

Question. Was this statement prepared by you personally?
495 Answer. The facts were given by me and prepared in Mr. Mott's office.

Q. As a matter of fact, was it not prepared for you by the defendants' counsel and approved by you?

A. Yes, sir; after looking at it.

Q. Are there not several facts stated here with which you are not personally acquainted?

A. I don't know that there are any.

Q. You have said, on page 3 of your statement, that at the time the Picayune establishment was purchased by the Herald Company, the Herald Company owed you about twenty-five hundred dollars cash. State the exact amount of money advanced by you.

A. I think it was about twenty-five hundred dollars. I don't know the exact amount without looking at my check-book.

Q. Wasn't the amount of money advanced by you nineteen hundred and fifty-nine dollars and eighty-five cents, as shown by the

testimony taken and by your returned checks, filed in the case
496 of W. A. Weed *vs.* The Herald Company, No. 5076 of the sixth district court of the parish of Orleans.

A. I don't think they comprise all the moneys I advanced to the Herald. I think I gave more money than that. The exact amount I don't remember, but I am certain it was over that.

Q. In your estimate of the amount of twenty-five hundred dollars, have you not taken into account the amount which you paid upon a judgment obtained against you in that case at the suit of Weed?

A. Yes, sir; I think so.

Q. Wasn't that money paid several months after December, 1873?

A. Yes, sir; It was after the first transaction.

Q. Then, if you estimate that amount as a part of that twenty-five hundred dollars, you are mistaken, are you not, that in December, 1873, they owed you twenty-five hundred dollars?

A. I think so.

Q. In speaking of the formation of the New Orleans Pic-
497 ayune Printing Company, you say Holbrook was assigned sixty-five shares of the capital stock; "is it not a fact that the sole consideration given by Holbrook to and received by the New Orleans Picayune Printing Company for this assignment to Holbrook for the majority of the stock was the assumption by him for the payment at maturity of the twelve months bond?

A. Yes, sir; that's true.

Q. You say, in continuation of the account you give of the formation of the Picayune Company, that it was also agreed that the Herald newspaper should be suppressed; please state whether it was not further agreed that the stockholders of the company should become proportionately owners of the capital stock of the new company.

A. That is true, to a certain extent; but Hancock and Walker had less stock in the Picayune Company than they had in the Herald Company.

Q. Was not the amount assigned to them proportionate to the amount they had in the Herald Company, which they had
498 paid or was supposed to have paid in the purchased price of the property; in other words, it was additional stock, issued to them and placed in your hands, was given in that new company?

A. Yes, sir.

Q. Each *bona fide* stockholder was to have the same amount?

A. Yes, sir.

Q. After the formation of the New Orleans Picayune Printing Company, in the manner in which you have described it, state in what its capital consisted; that is, its property.

A. It consisted in the good-will and material of the paper?

Q. It consisted, did it not, of the Picayune Printing Establishment?

A. I don't know, exactly, the distinction which you call between capital and property.

Q. Capital is paid in cash, and property in rights.

A. I don't know of anything else, but the material.

Q. Did not, therefore, the stockholders of the Picayune Company own the capital of the new company *pro rata*?

499 A. They owned the property. I don't know the distinction between capital and property. I understand the capital to be the good-will of the paper and the material.

Q. And these belonged to the stockholders of the new company?

A. Yes, sir; of course.

Q. You say that "this proposition to transfer to Mr. Holbrook sixty-five shares out of the one hundred and twenty shares of the stock of the Herald Company, which stood in my name, and for which I held the certificate." Are you not mistaken in saying that the stock stood in your name, the stock you transferred to Holbrook?

A. No, sir; it stood in my name; two certificates were transferred to me, of forty shares each, and I held them and owned them, by this transfer from Walker and Hancock.

Q. You mean to say that you had in your possession two certificates of stock, of forty shares each, which were delivered to you by Hancock and Walker?

500 A. Yes, sir; I said two certificates, forty shares each.

Q. Had the shares which you had in your name been transferred on the books of the company?

A. No, sir; because Hancock and Walker thought it would be better for my name to appear on the books of the company, because being in public life and a politician, they thought it might injure the reputation of the paper if it was known that I had the controlling interest in the stock, and my name did not appear on the books for that reason.

Q. You are mistaken in saying, strictly, that the stock stood in your name?

A. It stood in my name, and just that way. I possess the certificate for it.

Q. As a matter of fact, were not these certificates placed in your hands by Hancock and Walker, under an arrangement made by them with the stockholders of the company, to be used by you as security for the money advanced by you to the company, or to be obtained by you for the company?

501 A. I don't know that they ever had any arrangement with the stockholders of the company. My arrangement was with Hancock and Walker, and it arose in this way: They first applied to me to lend them a little money to pay off their hands off a Saturday night, and I loaned them a little money. They then asked me for a little more money for some other purpose, and a little more money, and I kept a lending more money until they became indebted to me for a considerable amount of money. They then, in order that I might secure myself and get my money back, gave me these certificates of stock that I might have control of the paper and the materials. They subscribed for these forty shares of unsubscribed stock. There were eighty shares of unsubscribed

stock, and they made a subscription for this stock, which made up one hundred and twenty shares. That subscription was made and paid for by their services, as they assumed, and as the board
502 of directors passed a resolution declaring that to be their stock by reason of their services. They then gave me this stock, and that was all that was said about it.

Q. You don't know anything about Messrs. Hancock and Walker having obtained from the other stockholders a written surrender of certain stock for this purpose, in addition to the amount issued to them by the company?

A. That was about another matter. Then they got up some sort of an arrangement by which they were going to make a surrender, with a view of getting a large amount of capital to make it a permanency. That had nothing to do with the arrangement between Walker, Hancock, and myself; that is another affair.

Q. The certificates which they issued to Mr. Holbrook, of which you speak in your statement, were the identical certificates of the stock which had been placed in your hands by Hancock and Walker?

A. Well, I think I gave them the certificate; I think I
503 gave him the identical certificate, and also the certificate of the stock of eighty shares signed by Walker and Hancock.

Q. You mean the sixty-five shares?

A. I think I gave him everything I had; then I gave him the certificate of sixty-five shares under this arrangement signed by Walker and Hancock. I had the stock-book, and filled up this certificate and gave it to him, so as to give him control of the Herald Company.

Q. The certificate on file in this suit for sixty-five shares was the certificate in your possession in blank signed by Walker and Holbrook subsequently?

A. Yes, sir; they gave me possession of the stock-book, with a large number of certificates signed by Hancock and Walker. The truth is they gave up the whole concern to me to keep up the paper and having something to do. They considered the thing already bursted. Myself and my friends had already put in $8,000
504 or $9,000, and as the thing would have failed two or three weeks before it did if I had not loaned them these little sums of money to pay the hands and keep the thing going.

Q. You say in your statement that you consider that, under the arrangement made with them, that you were authorized to use the stock for the benefit of the Herald Company; in what manner did you use it for the benefit of the Herald Company?

A. By getting the Herald Company transferred into the Picayune Company, and by getting friends and myself to go on the bond of the Herald Company, so as to get the Picayune establishment's good-will.

Q. That considerable benefit you rendered to the Herald Company was to acquire for the Herald Company the ownership of the New Orleans Picayune?

A. Yes, sir; and its property, for we all considered the Herald

company bursted. I had a $1,000 in it, and my friends made up the balance.

505 Q. You or your assigns obtained a proportionate stock in the Picayune Company for this $1,000?

A. Yes, sir.

Q. Now, on this transfer of the sixty-five shares of the Herald Company's stock to Holbrook, of which you made the manual delivery of the certificate to Holbrook, did not the transaction occur without Hancock's knowledge, so far as you know?

A. Well, I don't know if he knew anything about it or not. I know it was done by the solicitation of Judge Walker, or upon his suggestion.

Q. When you say that the Herald Company was undoubtedly insolvent, you assume that the company had debts that it had not paid?

A. It was well known that it could not pay its debts.

Q. You say that you paid some of the debts of the Herald Company, and that you were subrogated, did you ever pay any portion of its debts other than the claim of Weed?

A. That is all I remember.

506 Q. You mention in that statement a disagreement between Holbrok and Messrs. Walker and Hancok. State whether you were speaking from your own knowledge, or from hearsay.

A. I am speaking from what Holbrook told me, and from what Hancock and Walker told me.

Q. It was mere hearsay, you were not present at any agreement?

A. No, sir; but whatever I say, I got it from these three persons.

Q. Did their statements correspond in all respects?

A. They seemed to agree that they were all a pack of damn scoundrels, Walker thought that Hancock and Holbrook were rogues, Holbrook thought that Walker and Hancock were rogues, Hancock thought Holbrook and Walker were rogues.

Q. In this statement, according to you, they did not disagree in the statement of facts?

A. There was great unanimity.

Q. What did Hancock tell you?

A. He said Walker was a damn —, and he would not have anything to do with the paper while Holbrook had anything to do with it.

507 Q. Do you know personally of the circumstances by which Mr. Hancok left the office of the company?

A. I don't remember any of the details. I was told them all, but I don't remember all of the details of the disturbance.

Q. Did Hancock ever tell you that he left the editorial rooms of the Picayune, because they would not allow him to have full control of the paper?

A. I don't remember. I don't think he wanted to assume entire control of the paper.

Q. Did he not tell you, if he spoke to you about it, that the reason he left was, that Holbrook assumed editorial management of

the paper in violation of what he considered the agreement between Holbrook and Walker?

A. I think that is so. I think that is what he told me, that is my recollection of it.

Q. After speaking of the transfer of the Picayune to Hernandez you say, "And subsequently in 1874, failing to find a purchaser, the property was sold to A. M. Holbrook individually, for
508 about $27,000." Was not the sale to Holbrook actually made the next day?

A. I don't know whether it was or not, I don't recollect the exact dates, it was about the same time.

Q. It was no distant time?

A. No, sir.

Q. It was to all intents and purposes a simultaneous transaction?

A. It was within a few days or a week.

Q. Now, was it not understood at the time, that the pretended transfer of the property was made, that the property was to be transferred to Holbrook?

A. There could be no understanding at that time. When Holbrook failed to meet the bond as he had agreed to, he notified me that he would not pay it, and he said, "Now, inasmuch as I cannot meet the bond, I think it is but justice to you, who is responsible on this bond, that you should have the property," and with that understanding it was transferred to Hernandez, who was acting for me in the matter, and after having that understanding with
509 Holbrook I went to Mr. Walker, and insisted that the bond should be met, and that Hernandez and I should be held harmless, and Judge Walker said he would see, he thought he could get somebody to furnish the money and take the property; and I told him if he would get the money and pay the bond, I would surrender to him and his friends the entire property; all I desire was to protect Hernandez as surety on that bond, as I had guaranteed him against loss, and it did not make any difference to me who paid it so long as it was done, and he said he would see if he could not get somebody to do it. I saw him several times on the subject, and he finally utterly failed to get anybody to furnish the money, or guarantee Hernandez, and I was left with the bond to pay, and the possession of the property.

Q. Who owed the bond?

A. Mr. Holbrook assumed the bond.

Q. He was the debtor?

A. He agreed to pay the bond.

510 Q. Did the Picayune Company owe the bond at all?

A. Well, I think so; I think everybody that was connected with it owed it in good faith, and they were bound in good faith to guarantee Hernandez against loss.

Q. Did you not know that the laws of Louisiana forbid the application of a property sold under a twelve months bond to pay the bond?

A. I don't know; I don't know now that the property would not be liable for the bond, especially with the consent of the people

who held the property. I think it would be a great piece of outrage to compel me to pay the bond after I was the friend of the concern, if they owning the property never paid me.

Q. Had not Holbrook agreed to pay the bond in consideration of sixty-five shares of the stock?

A. Yes, sir; but that did not relieve the other people who were responsible to me. I am not talking about the legal responsibility, but I am talking about the moral responsibility.

511 Q. Did you know or not at that time that Holbrook devised plans, whereby the property was to be nominally sold to Hernandez, and transferred to him to give him a title?

A. Holbrook said at the time that if I would let him have the property on long time he would take it.

Q. Have you ever stated to anybody that you knew that that was Holbrook's purpose to get the property?

A. I don't know.

Q. Don't you know that Holbrook, in order to obtain the pretended ratification of such a transfer by the stockholders in number and amount, placed various shares of stock that he owned or controlled in the names of different persons whom he induced to attend the meeting of stockholders for that purpose?

A. I don't know.

Q. Have you not seen a letter written to Richard Weightman by Mrs. Nicholson, one of the defendants, after the death of

512 Holbrook before her marriage with Nicholson, another defendant, requesting Weightman to surrender certain stock, saying to him that the stock was only given to him for that purpose. That Mr. Nicholson, who had stock for that purpose, had surrendered his?

A. I never saw any such letter.

Q. In obtaining the re-transfer of the property to himself did not Holbrook actually pay $32,000.00, including $5,000 paid to you on notes held by you, as explained in your statement?

A. He paid $5,000 on the notes, and the balance he paid in notes, of which $800 was to be paid per month during the winter's months, and $500 per month during the summer months until it was paid, running through three or four years.

Q. The price aggregated $32,000.

A. No, sir; less than that, about $5,000.

Q. Including the $5,000, it was an aggregate of $32,000.

A. Yes, sir.

513 Q. Did not Holbrook, up to that time, refuse to acknowledge these notes?

A. I don't remember.

Q. Were they not past due?

A. I don't remember.

Q. Did not Holbrook swear in the case of Weed against the Herald Company that he did not owe the notes, and would not pay them?

A. I don't know that he did.

Q. If it is true that he did before refuse to recognize the notes,

and had sworn that he would not pay the notes, can you reconcile the payment of them after the property was re-transferred to him upon another hypothesis than that he considered the amount paid upon them as part of the purchase price of the property?

A. Well, I don't know. I cannot reconcile Mr. Holbrook's hypothesis.

Q. Were you well acquainted with Holbrook?

A. I was not. No, sir; not intimate with him. I did not see him a dozen times in my life.

Q. Did you not consider him a close man of business?

514 A. I did not consider anything about it in that way.

Q. Are you ready to swear, as you already have done substantially in the statement filed, that you really believe Holbrook intended to part with the Picayune establishment, which he controlled, in satisfaction of a twelve months bond for $20,000—property for which he paid the very next day $32,000?

A. He did not pay $32,000.

Q. Well, for whatever he did pay?

A. He did not pay anything like it. He agreed to pay little monthly payments, running through several years, which, at the reduced interest of six per cent., was not anything like $20,000, because his security was utterly worthless, and if I had somebody to come in and pay the bond, within $3,000 of its amount, I would have taken it rather than take Holbrook's notes.

Q. But did he not come into the possession of the property and its revenues?

A. I don't know. He certainly took possession of what-

515 ever revenues it had. I don't know what the revenues were, and never did know. I state I would have taken $3,000.00 less than the bond rather than take the property. I did not consider the price which I got in paper was equivalent to $20,000—the amount of the bond, considering the bad security. I considered the security worthless, and this was the best arrangement I could make, after consulting with Walker and those parties. There is no doubt that Holbrook got possession of the property.

Q. As a matter of fact, did you not, under a written agreement, remain in possession of the property; that is, have a keeper there until you sold the notes to Howard?

A. Yes, sir.

Q. Did not Howard also remain in possession, through a keeper, until the final payment of the notes?

A. Yes, sir. When I transferred the notes to Howard I transferred all my rights. My keeper was Mr. St. Amand.

Q. Was not Quintero also appointed by Holbrook?

516 A. I never knew anything about it.

By Mr. MOTT:

Q. What was the marked value of the notes and security that Hernandez got in payment for the Picayune establishment when it was transferred to Holbrook?

A. I don't think it would be twenty-five cents on the dollar.

Q. What would it sell for in the market?

A. Not twenty-five cents on the dollar. I could not get that, unless from Howard, who wanted to use the paper. Howard bought the notes simply and solely for the purpose of having the whip-hand over Holbrook, to keep the paper from pitching into his lottery.

He did not buy it for an investment. He bought it to get Holbrook by the throat, as the creditor does his debtor. I would not give $5,000 for any paper in New Orleans.

By consent of the counsel, the signature of the witness to this deposition is dispensed with.

517 DISTRICT OF LOUISIANA, *ss:*

I hereby certify that on the days named in the foregoing depositions I was attended by the said witnesses and the counsel for the said parties; that the said witnesses were duly sworn and examined and their depositions reduced to writing, and that the signatures of the said witnesses to their depositions were waived by the said counsel.

November 20th, 1879.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court.

Answer of Joseph Hernandez in case of Walker vs. *Warmoth* et als., *6th District Court. Offered by Defendants November* 20, 1879, *and marked by Comm'r* "*N, No.* 10," *for identification.*

In the Sixth District Court for the Parish of Orleans.

ALEXANDER WALKER
vs.
H. C. WARMOTH *et als.* } No. 7285.

That at the special instance and request of H. C. Warmoth, with the knowledge and approbation of plaintiff, respondent signed,
518 as surety, the twelve months bond given to the sheriff by the New Orleans Herald Printing Company, in the suit of John Phelps *vs.* The New Orleans Printing and Publishing Company, No. — on the docket of this honorable court, for the sum of twenty thousand dollars or thereabouts; that respondent signed said bond as an act of friendship, without remuneration, at the instance and request of and under the positive assurance of said Warmoth that respondent should be fully secured against any responsibility for the same, all of which was well known to the president of the Herald Company, the plaintiff, who assured respondent that he should be held harmless for said bond, and not be called on to pay the same.

That subsequently the said Warmoth informed respondent that the Herald Company could not furnish or give any security for the payment of said bond at maturity, so as to hold respondent harmless therefrom; that the said Herald Company was insolvent;
519 that it owed him (Warmoth) a large amount of borrowed

money which it would not pay; and for the purpose of protecting respondent, and getting the borrowed money due him secured, he had entered, with the approval of the plaintiff, into negotiations with A. M. Holbrook to have the said property purchased by the said Herald Company at said sheriff's sale, viz., The Picayune Newspaper and Printing Establishment, transferred to said Holbrook, who would assume the payment of said bond at maturity, and hold respondent harmless for the same as security for the Herald Company, then said to be insolvent, and unable to pay its debts.

That as a part of the transaction by which the said property was transferred to said Holbrook, it was understood that all the parties composing the said Herald Company, should become members of a corporation to be formed between them and said Holbrook, the capital of which should be the said Picayune Newspaper and Printing Establishment, and that the said Herald Company
520 should be extinguished, all of which was done.

That just before the maturity of the said twelve months bond, the said Holbrook notified respondent that he would not be able to pay the said bond; that respondent thereupon called upon said Warmoth to keep good his understanding to hold respondent harmless, and to furnish the means of paying said bond, which said Warmoth professed his willingness to do, and furnished respondent with the funds necessary for that purpose. When, however, he, respondent, was about to take up the said bond he was notified by Julius Aroni, Esq., the attorney-at-law of said Walker, or of said Herald Company, that he, said Aroni, would, on the part of his client, pay and satisfy and extinguish said bond before the maturity thereof; that subsequently, however, said Aroni further notified respondent that his client could not pay the bond. Whereupon, to protect his credit as a man of business, respondent took up
521 the same in the Canal Bank, the then holder thereof, and and having thus paid for the property, for which the said bond was given, respondent demanded of said A. M. Holbrook that the said property should be transferred to him, which was done, and respondent received and held the same for the use and benefit of H. C. Warmoth in fulfillment of his agreement, and who had furnished the money to take up the bond. That thereupon or thereafter the said Warmoth made a contract of sale of the said property so purchased as aforesaid to said Holbrook, when your respondent transferred the same to said Holbrook, and delivered to said Warmoth all the documents connected therewith.

Testimony for Defendants. Filed March 25th, 1880.

United States Circuit Court, Fifth Circuit, District of Louisiana.

E. C. HANCOCK
vs.
Mrs. ELIZA J. HOLBROOK *et als.* } No. 8320.

522 Testimony taken on behalf of defendants before F. A.

Woolfley, United States commissioner, this 18th February, 1880.

Present: Robert Mott, Esq., for defendants; H. C. Dibble, Esq., for complainant.

CHARLES T. HOWARD, sworn for defendants, says:

By Mr. MOTT:

Question. Is this paper a copy of the affidavit made by you in the case of Barnes against the Picayune Printing Co., marked No. 11?

Answer. Yes, sir.

Q. Are the facts stated in that document true and correct?

A. They are true.

Q. In this affair of the Picayune Printing Co. certain securities were transferred to you in the shape of mortgage notes. Can you state whether they were of value—first, second, third, or fourth in rank?

A. As far as I can remember, I held securities on the property of the Picayune building. I don't know whether they were the first or second mortgage. I had a mortgage on that prop-
523 erty, and other property in the rear of the city, but I don't know their rank.

Cross-examined by Mr. DIBBLE:

Question. Was this loan you made Judge Walker made prior to the time that Holbrook transferred the property to Hernandez, which was in December, 1874?

Answer. I was before that; certainly. I understand that I loaned the money to Judge Walker prior to the transfer of the property to Hernandez, which was in December, 1874.

Q. At what time did you sell this certificate to Mr. Holbrook, or gave it to him?

A. To the best of my recollection, it was the last of November or the 1st December, 1874.

Q. How came you to sell the certificate to Mr. Holbrook; did he solicit it.

A. Governor Warmoth asked me to sell it to Mr. Holbrook.

Q. Did Holbrook go to you or you go to him?

524 A. I went to him at the solicitation of Warmoth. Warmoth was a friend of mine and I wanted to oblige him, but I wanted the money also.

Q. What explanation did Warmoth give to you for desiring you to sell the certificate to Holbrook, if any?

A. He simply said that Holbrook wanted to get all the stock that he could, and wanted to pay for it.

Q. How much did he pay you for the certificate of stock?

A. One thousand dollars.

Q. In cash or by check?

A. In a check.

Q. Did he explain to you what he wanted that stock for?

A. No, sir; not that I remember.

Q. Did he say it was of any value to him?

A. He said he wanted to get possession of all the stock he could in that paper.

Q. For what purpose?

A. He did not say that. I presume it was the same as I—trying to get hold of a lottery.

Q. Did he not tell you he wanted to use it in a stock board?

525 A. I don't remember. He never told me that.

Q. Do you know whether Holbrook sent Warmoth to you, or Warmoth went of his own accord?

A. I think Warmoth went of his own accord, from what I remember; he wanted to help Mr. Holbrook, who was his friend.

Q. And you think this was in November or December, 1874?

A. I know it was before that from the fact that it was before the payment of the note of Mr. Hernandez; that is the way I remember it.

Q. Do you know Richard Weightman?

A. Yes, sir.

Q. Do you know whether he ever had any stock in the Picayune Company or not?

A. He had one share that I know of.

Q. Do you know whether he paid anything for it or not?

A. I don't know.

Q. You afterwards acquired, as you have stated, the ownership of the notes given by Holbrook to Hernandez for the purchase of the paper; have all these notes been paid?

A. All of them.

526 Q. Nothing was lost by the transaction?

A. No, sir.

By Mr. MOTT:

Q. How long had the notes to run that you paid? (Held.)

A. To the best of my recollection, three years.

By Mr. DIBBLE:

Q. They were bearing interest all the time?

A. Yes, sir; six per cent.

JOSEPH HERNANDEZ recalled by complainant for cross-examination:

Question. You speak in your affidavit of having originally signed the twelve months bond as surety, purely as an act of friendship to Warmoth; had you any transaction whatever with the Herald Company, its officers, or stockholders?

A. No, sir; I think I was a stockholder myself.

Q. All your transaction was purely with Warmoth?

A. Yes, sir, as a friendly transaction.

527 You looked entirely to Warmoth to protect you?

A. Yes, sir.

Q. Neither the Herald Company or the stockholders ever gave you any assurance of protection?

A. No, sir.

Q. You mention that when the bond fell due and you were going

to pay, you were notified by Julius Aroni, Esq., that his client was not going to take up the bond. Whom did he act for?

A. I don't know.

Q. Did he profess to act for Hancock, the plaintiff in this case?

A. I don't know; I went to his office and asked him if he was going to pay the bond, because it matured on that day; it was nearly three o'clock and I did not want it to be protested, and he said he would not pay it.

Q. He never professed to act for Hancock?

A. He never told me, and I never asked him.

Q. Having testified to the payment of the bond at the Canal Bank, you demanded that the Picayune property should be transferred to you. How did you make that demand?

A. I don't remember.

528 Q. Was it a written demand or a verbal?

A. I don't remember.

Q. On the date that the bond matured was it paid?

A. I don't know.

Q. I suppose you had already been made aware that before the bond was paid by the directors of the Picayune Company, presided over by Holbrook, had passed the resolution which is set forth in the bill of complaint in this case, which was to the effect that "whereas the Picayune Company was unable to pay the bond at maturity, that therefore the president of the company should transfer the property to you upon your payment of the bond"?

A. Yes, sir; I think there was such a thing as that.

Q. You knew that had been done when you paid the bond?

A. I don't remember anything about it; I only paid the bond because I had a guarantee and mortgage upon the property.

529 Q. Did you not understand that the property was to be handed over to you on the payment of the bond for your protection?

A. Yes, sir; it was so understood.

Q. You mention in this affidavit that when the property was transferred to you you merely held the same for the use and benefit of Warmoth?

A. Yes, sir; because he paid the money.

Q. Did you actually take possession of the Picayune property?

A. I don't remember.

Q. Did you edit the paper for any time?

A. No, sir.

Q. Did you go to the Picayune office and assume charge of it?

A. No, sir.

Q. Did you appoint anybody to take charge?

A. No, sir.

Q. You did not actually take possession of the property?

A. No, sir.

Q. After the property was nominally transferred to you did you offer to sell it to anybody?

A. I did not; because I looked upon Governor Warmoth

530 as the real party who owned the paper, because he guaran-

teed the payment of the bond.

Q. You did not try to sell it to anybody.

A. I did not.

Q. Was it not really understood at the time this property was nominally transferred to you upon you paying the bond, that it was to be restored or transferred to Holbrook?

A. I don't remember any such condition. To some extent I felt perfectly guaranteed on Warmoth's word. He told me he would pay the bond, and I would suffer nothing, he would make the amount good. I looked to him for the reimbursement of my money. I don't know whether it was understood that I should transfer the property to Holbrook afterwards or to Warmoth.

Q. As a mere question of discussion, did you not hear it discussed by Warmoth and Holbrook that it was to be transferred?

A. I did not hear any conversation at all. I merely went
531 there and they told me to sign it, and I signed it right away.

Q. Did you not hear Warmoth or Holbrook say that the object of making this nominal transfer to you was to get the property in his own name after the payment of the bond.

A. They were talking together, but I paid no attention. I was in a great hurry at the time and did not have time to attend to the business of others, so I signed and quit.

Q. Did you know Holbrook?

A. Yes, sir.

Q. Was he a good business man?

A. I reckon so; he had that reputation.

Q. Do you think Holbrook as a good business man could transfer the property to you to pay the bond of $20,000, for which he gave $32,000 the next day?

Mr. Mott objects to any expression of opinion by the witness.

A. I don't believe that any business man would do such a thing.

Q. You had four shares in the Herald Co., did you not?
532 A. Yes, sir; four or eight, I don't know which.

Q. Did you not have four shares in the new Picayune Co.?

A. I don't remember.

Q. You don't remember having two shares in the Picayune Company?

A. No, sir.

Q. You don't remember having conveyed them to Holbrook?

A. Now, that you mention Holbrook, I think I did sign something. He had a brother there and it strikes me that I signed some transfer. I recollect having transferred something to Holbrook.

Q. Did you get anything for it?

A. No, sir.

By Mr. MOTT:

Q. Did you not transfer that stock to Warmoth?

A. To somebody; I cannot say which.

Q. You cannot tell to whom you transferred it?

A. No, sir; there was a confusion of things going on and I don't know.

Q. You stated in your testimony to-day that you did not
533 have any assurance from anybody that this bond would be paid by Warmoth. Did not Judge Walker ask you to sign it for $20,000?

A. Yes, sir.

Q. Did he not tell you that you would be guaranteed?

A. Yes, sir.

Q. Walker, the president of the Herald Company, told you that?

A. Yes, sir; I think it was on the day the paper was sold, or the day before.

Q. When the Picayune establishment was transferred to you in December by Holbrook, did you not appoint a keeper to go and hold the property under the pledge?

A. I really do not remember.

GEORGE NICHOLSON recalled by Mr. DIBBLE for cross-examination:

Question. It appears from the proceedings of an alleged meeting of the stockholders of the New Orleans Picayune Printing Co., at page 15, which is offered in evidence, the meeting was held on
534 the 22d December, 1874, that you represented three shares of stock in the Picayune Printing Co.; when did you acquire these shares?

Answer. I don't know of any alleged meeting; there was a meeting held at that time; I was there.

Q. When did you acquire these three shares of stock?

A. I cannot speak as to the time now; I know I had some shares; one share I had for services that I had previously rendered, and some shares I bought; I don't know whether these are the shares or not.

Q. You did not hold the whole three shares as represented at that meeting?

A. I don't know.

Q. Did you not get these shares immediately preceding that meeting?

A. No, sir.

Q. From whom did you get them?

A. I got two shares, I think, from David Bidwell, but I acquired shares at different times; I cannot say whether they are the same shares or not?

535 Q. In the testimony of Mr. Richard Weightman in this case, it appears that he states that he received a letter from Mrs. Nicholson, your co-defendant, in which she stated to him that she desired him to return certain stock that had been placed in his possession simply to enable him to vote at that meeting; did you return the shares placed in your possession for that purpose?

A. There were none placed in my possession for that purpose.

Q. Do you know anything about Weightman's shares?

A. I know he held shares, but I don't know how he acquired them.

Q. Do you know whether he returned them as Mrs. Nicholson requested?

A. I believe he returned them.

Q. What became of the shares you possessed?

A. I gave them to Mr. Holbrook; the shares that I possessed then, but I have bought shares since that time.

Q. You were not on the board of directors?

A. No, sir; I was not.

By Mr. MOTT:

536 Do you know the character of these mortgage notes held by Hernandez and Howard?

A. They were third mortgage notes.

Q. Do you know whether any property has been sold upon which they operated, and what became of the property?

A. The property in the rear of the city did not bring the amount of the first mortgage; Rochereau seized and sold it; it did not pay the mortgage, and Mrs. Holbrook has to pay the difference.

Q. The property on Camp street; how much was on that?

A. Ahead of this mortgage was one of $16,000, with interest from 1865, to secure Tilleston & Hollingsworth of Boston; there were $8,900 in favor of H. S. Buckner; that was the first mortgage, the Tilleston's was the second, and another mortgage, I don't know the date of it, given to the heirs of Bullett & Wilson, I think for $16,000.00, but I believe half of it had been paid.

Q. These were all ahead?

A. Yes, sir; they were ahead of the mortgage given to Hernandez.

537 Q. What was the property worth upon which it operated?

A. I cannot say what the Picayune building was worth at that time.

Q. It was on the building?

A. Yes, sir.

By Mr. DIBBLE:

Q. Have all these mortgages been paid since?

A. They have not.

Q. Are they still existing on the property?

A. The mortgage in favor of Bullett has been paid, and a portion of the other has been paid.

Q. Who held these first-mortgage notes?

A. Mr. Shunway holds $8,900. After that there were mortgages to the amount of $34,000, which were given to Hernandez as security; $34,000 in favor of W. W. Divine.

Mr. Mott offers in evidence the judgment in the case of Meyer & Neumeyer against the Herald Co., No. 5718, sixth district court, parish of Orleans, for $700, interest and cost. (N, No. 2.)

The judgment in favor of John Conniff against the same

538 defendants in the same court, No. 7229, for $300, interest and costs.

The judgment in favor of W. A. Weed against the same defendant, in the same court, No. 5776, for $999.68, interest and costs.

The judgment in favor of Thomas Houlihan against the same defendant, fourth district court, No. 42672, for $497.82, interest and costs.

The judgment in favor of John H. Montague and of John R. C. Lewis, testamentary executor of the last will and testament of John Phelan, third opponent, $6,800, with interest and costs, on which a seizure was made of the presses, types, cases, &c., and all the moveable property contained in the premises occupied by the late Herald Printing Co., situated on Gravier street between Camp and Magazine, in the first district of New Orleans, and the balance unsold of the materials contained in the same premises, which yielded $1,772.55. less the charges, $331.90.

It is agreed by the solicitor for the complainant that the
539 amounts above stated in the several suits shall be conclusive evidence of the amounts of the judgments rendered without the production of the records.

DISTRICT OF LOUISIANA, *ss:*

I hereby certify that on the day named in the preceding depositions I was attended by the said witnesses, as well as the counsel for the parties to the said cause; that the said witnesses were duly called and examined and their depositions reduced to writing; and that the signatures of the said witnesses to their depositions were waived by the said council.

February 18th, 1880.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court.

Affidavit of Chas. T. Howard, in the case of Barnes vs. *N. O. Picayune Printing Co., offered by Defendants, 18th Feb'y, 1880, marked "N, No. 11," by Commissioner, for identification.*

United States Circuit Court, District of Louisiana.

540 THOMAS BARNES
vs.
N. O. PICAYUNE PRINTING COMPANY AND OTHERS.

CHARLES T. HOWARD, being duly sworn, deposes and says: That the truth and fact is and are as to any shares of stock belonging to said Walker; that sometime previous thereto said Walker desired to borrow $1,000 from affiant, and offered ten shares of stock of the New Orleans Printing Company as collateral security therefor, which affiant declined to accept unless said Walker would unconditionally transfer the same to affiant; that therefore said Walker did unconditionally transfer said shares to affiant by signing a blank power to transfer said shares on the back of the certificate thereof and handing the same to affiant; that thereupon affiant informed said Walker

that if his note then given for $1,000 was not paid at maturity that affiant would sell said stock for what it would bring on the
541 market to pay said note, to which said Walker assented, and thereupon affiant loaned him $1,000.

That upon the maturity of said note, affiant frequently demanded payment thereof from said Walker, and at his request waited several months, but said Walker failed to pay said note, and thereupon affiant sold said stock, as he had a right to do, for $1,000, which was more than it was worth at that time or since. * * *

(Signed) CHAS. T. HOWARD.

Sworn to and subscribed before the undersigned, a commissioner of the circuit court, duly appointed, and sworn by the circuit court of the United States, in and for the district of Louisiana, at New Orleans, this fifth day of May, A. D. 1876.

(Signed) ANDREW HERO, JR.,
Comm'r of the Circuit Courts.

Hearing and Continuance of Cause.

Extract from the Minutes, November Term, 1879.

NEW ORLEANS, THURSDAY, *April 8th*, 1880.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, district judge.

542 EDWARD C. HANCOCK *vs.* E. J. HOLBROOK *et als.* } No. 8320.

This cause came on for hearing on the pleadings, exhibits, and evidence, and other proceedings in the cause—Henry C. Dibble for complainant, and Thomas J. Semmes and Robert Mott for defendants; and after hearing opening argument of counsel for complainant in part, it was ordered that the cause stand over for further hearing till to-morrow at 10 a. m.

Hearing and Continuance.

Extract from Minutes of 9th April, 1880.

E. C. HANCOCK *vs.* E. J. HOLBROOK *et als.* } No. 8320.

The court resumed the trial of this cause from yesterday, and the said counsel for the parties respectively being all present, the trial was proceeded with, and after hearing further argument on behalf of complainant, the cause was continued till to-morrow at 10 o'clock a. m. for further hearing.

543 *Hearing and Continuance.*

Extract from Minutes of 10th April, 1880.

E. C. HANCOCK
vs.
E. J. HOLBROOK *et als.* } No. 8320.

This cause came on for further hearing, and the said counsel for the respective parties being all present, the trial was proceeded with, and after hearing further argument on behalf of complainant, it was ordered by the court that the cause stand over for further hearing till Wednesday, 14th instant, at 10 a. m.

Hearing and Continuance.

Extract from Minutes of 14th April, 1880.

E. C. HANCOCK
vs.
E. J. HOLBROOK *et als.* } No. 8320.

And the court having resumed the trial of this cause, and having heard the conclusion of the opening argument of counsel for the complainant, and in part the argument of Robert Mott, on behalf of defendants, ordered that the cause stand over for further hearing till to-morrow at 10 a. m.

544 *Hearing and Continuance.*

Extract from Minutes of 15th April, 1880.

E. C. HANCOCK
vs.
E. J. HOLBROOK *et als.* } No. 8320.

The court resumed the trial of this cause from yesterday, and the said counsel of the parties respectively being present, the trial was proceeded with; and after hearing argument of Thomas J. Semmes on behalf of defendants, the cause was continued for further hearing until Saturday, 17th instant, at 10 a. m.

Cause Continued by Consent.

Extract from Minutes of 17th April, 1880.

E. C. HANCOCK
vs.
E. J. HOLBROOK *et als.* } No. 8320.

By consent of counsel, leave of court first had, this cause is continued to Monday, 19th instant, at 10 o'clock a. m.

Hearing and Continuance.

Extract from Minutes of 19th April, 1880.

545 E. C. HANCOCK
vs
E. J. HOLBROOK *et als.* } No. 8320.

This cause came on to be further heard, and having been further

argued by counsel for defendants, it was continued till to-morrow at 10 a. m.

Hearing and Continuance.

Extract from Minutes of 20th April, 1880.

E. C. HANCOCK
vs.
E. J. HOLBROOK *et als.* } No. 8320.

This cause came on to be further heard, and having been again argued by counsel for the defendants, it was ordered that it be continued till Thursday, 22d instant, at 10 a. m.

Hearing and Submission of Cause.

Extract from Miuutes of 22d April, 1880.

E. C. HANCOCK
vs.
E. J. HOLBROOK *et als.* } No. 8320.

546 This cause came on to be further heard, and having heard the closing argument of counsel for the complainant, the court took time to consider.

Agreement to File Documents, Filed April 28th, 1880.

U. S. C. C., District of Louisiana, in Equity.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

It is agreed between solicitors for complainant and defendants, that the following documents shall be filed and marked as indicated.

On behalf of complainant:

1. Copy of act of sale of N. O. Picayune from A. M. Holbrook to the N. O. Printing and Publishing Co., (old co.) marked "H, No. 16."

2. Copy of marriage contract between Geo. Nicholson and Mrs. E. J. Holbrook, marked "H, No. 17."

3. Copy of answer of E. J. Hancock in case of Thomas Barnes *vs.* The N. O. Picayune Printing Co. *et al.*, No. 7824, U. S. C. C., marked "H, No. 18."

4. Citation of Hancock in said suit, marked "H, No. 19."

547 5. Affidavit of Henry C. Dibble relating to the loss of the record of Hancock *vs.* Holbrook, No. 7250, 6th district court, and to the subject matter of said suit, marked "H, No. 20."

6. The stock-book of the New Orleans Picayune Printing Co., now in possession of defendants, to be produced by them, marked "H, No. 21."

On behalf of defendants:

1. Notice of seizure, execution, and sheriff's return in suit of Wilkes & Hall *vs.* Alex'r Walker, No. 2245, 6th district court, marked "N, No. 13."

2. Notice of seizure in case of Houlihan *vs.* The Herald Co. No. —, 4th district court, marked "N, No. 14.

3. Judgment against Herald Co. in Weed *vs.* Herald Co., No. 5676, 6th district court, marked "N, No. 15."

4. Judgment against H. C. Warmoth in Weed *vs.* Herald Co., marked "N, No. 16."

(Signed) HENRY C. DIBBLE,
" ROBERT MOTT, *For Def'ts.*

548 *Document marked H, No. 16, Filed April 28, 1880.*

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this thirty-first day of January, A. D. eighteen hundred and seventy-two, before me, Robert C. Mott, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Alva Morris Holbrook, of this city, who declared that he does by these presents bargain, sell, and deliver unto the New Orleans Printing and Publishing Company, of this city, a company duly incorporated under the laws of the State of Louisiana, herein represented by their president, L. H. Gardner, and their executive committee, viz.: Albert Baldwin, E. H. Summers, and J. C. Morris, all of this city, here present, and purchasing for and in the name of the said New
549 Orleans Printing and Publishing Company, by virtue of a resolution of the board of managers of the said company, authorizing them to act herein, a duly certified copy of which resolution is annexed to a contract of sale made by the parties hereto before me, the present notary, on the twenty-ninth instant, the following described property and effects, upon the terms and under the stipulations hereinafter set forth, to wit:

The New Orleans Picayune newspaper, say the printing and job office, good-will, materials, presses, engines, and machinery of all kinds—the office as it now stands, and as it is run from day to day, with all its appurtenances, tools, implements, furniture, and conveniences as now used in either the printing, job office, sanctum, or any other department, together with all paper, ink, coal, fuel, oil, desks, tables, libraries, a complete file of the Picayune newspaper, as far as it is now in existence, from its first number; all stationery, and all other personal effects con-
550 nected with or belonging to the establishment.

It is understood and agreed that such furniture, etc., in said Holbrook's private office as have always been used by him individually are not included in this sale, and he is to have the use of an office, No. 19 Bank Place, on the second story, with access to the same.

It is further understood and agreed that said Holbrook is to lease the Picayune buildings to the said New Orleans Printing and Publishing Co. for one year from the first of February proximo, with the privilege of renewal year by year for five years. The yearly rent of said buildings is to be forty-five hundred dollars, payable

in monthly instalments on the first of each and every month. This sale is made for and in consideration of the price and sum of one hundred thousand dollars, in part payment of which the present purchasers have paid in cash at the signing of these presents the
551 sum of twenty-five thousand dollars, and the remaining seventy-five thousand dollars are to be paid as follows: ten thousand dollars in the capital stock of the said company, in paid-up stock, to be issued to said vendor upon the signing of these presents, and the balance in five promissory notes, all bearing even date herewith, and bearing interest at the rate of eight per cent. per annum from date until paid, drawn by the said New Orleans Printing and Publishing Company to their own order, and by them endorsed—the first promissory note being for twelve thousand five hundred dollars, payable thirty days after date; the second note being for twelve thousand five hundred dollars, payable sixty days after date; the third note being for thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars, payable six months after date; the fourth note being for thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars, payable nine months after date; and the fifth note being for thirteen thousand three hundred and thirty-three
552 $\frac{33}{100}$ dollars, payable twelve months after date. All of said notes, except the sixth and ninth months notes have been paraph'ed "*ne varietur*" by me, notary, in order to identity them herewith, and have been delivered to the said vendor, who hereby acknowledges the receipt of the same, as also the receipt of the twenty-five thousand dollars cash, for which said last sum he grants full acquittance.

It is agreed and understood that any advertisements or subscriptions for which said Holbrook has contracted running beyond the 1st of February, proximo, are to be carried out by the New Orleans Printing and Publishing Company, and the contract price of the same, *pro rata*, to the total time, is to be deducted from the purchase price of the paper, said Holbrook may, however, prior to the first of February proximo, designate such advertisements and subscriptions as he declines to have continued on these terms, and
553 these shall be dropped from the paper and books from and after the first of February, unless he has received payment for the same. Until this amount is ascertained the notes at six and nine months shall not be executed. The amount to be deducted shall be ascertained by John W. Watson and George Nicholson, who are hereby appointed experts for that purpose. If they fail to agree within ten days, they shall appoint an umpire, whose decision shall be final. When the amount is ascertained it is to be deducted from the total amount of the two said six and nine months notes, and then the said company shall issue two notes in equal amounts at six and nine months for the remainder.

It is further stipulated and agreed that the said Holbrook shall retain his vendor's privilege on and against the property and effects herein sold, and the said purchasers shall not alienate or encumber said property and effects to the prejudice of these presents.

554 The said purchasers agree and bind themselves to cause to be insured and kept insured at their own expense for the benefit of said Holbrook, the said property and effects, until fifty thousand dollars of the purchase price be paid, and the policy, or policies, of insurance are to be transferred to the vendor until the amount is paid as aforesaid.

In case of a failure to pay any of said notes at their respective maturity, thereby rendering legal proceedings necessary, the said purchasers agree to pay the attorneys' fees, provided that said fees does not exceed five per cent., and they are moreover to pay all expenses of this act and the U. S. revenue stamps, etc..

By reference to the annexed certificate of the Recorder of Mortgages for the Parish of Orleans, it appears that there are no privileges or liens standing in the name of said Holbrook and recorded against the property and effects herein sold.

555 When the amount to be deducted from the said six and nine months notes so ascertained as herein provided, the notes as aforesaid are to be issued for the remainder as before mentioned, and are to be paraphed "*ne varietur*" by me, notary, (and then delivered to said Holbrook) to identify them with this act.

And the said purchasers hereby accept this sale with all its terms and conditions, and acknowledge the receipt and delivery of the property and effects herein sold.

United States internal revenue stamps to the value of one hundred dollars are hereby affixed and cancelled.

Thus done and passed at the city of New Orleans on the day, month, and year herein first written, in the presence of George Nicholson and Francis B. Lee, competent witnesses hereto required, who have hereunto set their hands, together with the said parties, and me, notary.

Original signed:

A. M. HOLBROOK.
L. H. GARDNER,
E. H. SUMMERS,
ALBERT BALDWIN,
Executive Committee.
J. C. MORRIS,
R. C. MOTT, *Not. Pub.*

GEO. NICHOLSON.
556 FRANCIS B. LEE.

A true copy.

[SEAL.] (Signed) R. C. MOTT, *Not. Pub.*

Document marked H, No. 17. *Filed April* 28, 1880.

Be it known that on this the twenty-seventh day of the month of June, A. D. eighteen hundred and seventy-eight, before me, Joseph A. Quintero, a notary public in and for the parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared

Geo. Nicholson, Esq., and Mrs. Eliza J. Holbrook, and declared that they are about to enter into the bonds of matrimony with each other, and desired me to receive and record this instrument as their marriage contract.

Article 1st. The said Mrs. Eliza J. Holbrook declares that
557 her estate consist[s] of the following property:

A lot of ground with the buildings and improvements thereon, situated in the first district of New Orleans, in the square comprised within Constance, Orange, Richard, and Annunciation streets.

Two lots of ground, together with all the buildings and improvements thereon, situated in the first district of this city, in the square bounded by Bank alley, Camp, Natchez, and Gravier streets.

Four lots, with improvements, in the fourth district of this city, lots Nos. 1, 2, 3, 4, forming the southwest corner of Jackson and Carondelet streets, and lot No. 1, forming the corner of Jackson and Carondelet street.

The New Orleans Picayune Newspaper and Job Office Establishment, including the presses, type, machinery, and material of composition.

Forty-four shares of the capital stock of the Metainer Cemetery Association.

Article 2d. It is agreed that no partnership or community of *aequets* and gains shall exist between the future sponsors, so
558 that all the property, present and future, of the said Mrs. Eliza J. Holbrook shall be paraphernal property and under her administration, and the property of said George Nicholson, present and future, shall be his separate property.

Thus done and passed at New Orleans aforesaid in the presence of John T. Hall and William Walker, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names together with said parties, and me, the said notary.

(Signed) GEORGE NICHOLSON.
Mrs. ELIZA J. HOLBROOK.
JOSEPH A. QUINTERO,
Not. Pub.

Witnesses:
JOHN T. HALL.
WILLIAM WALKER.

A true copy.
[SEAL.] (Signed) JOSEPH A. QUINTERO,
Not. Pub.

Memo. by Clerk.

Answer of Hancock in case of Barnes *vs.* N. O. Picayune Printing Co. *et als.* No. 7824, U. S. circuit court, marked H, No. 18, recited in agreement filed 28 April, 1880, is missing and cannot be found after due and diligent search.

559 *Subpœna in Chancery to Hancock in Suit No.* 7824, *Docket U. S. Circuit Court, marked H, No.* 19, *and filed April* 28*th*, 1880.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district of Louisiana, Greeting:

You are hereby commanded to summon E. C. Hancock, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court, to be holden on the first Monday of May, 1876, then and there to answer a bill in chancery filed against him *et als.*, wherein Thomas Barnes, a citizen of the State of Texas, is complainant and E. C. Hancock *et als.* are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice
560 of the Supreme Court of the United States of America, this 1st day of April, in the year of our Lord one thousand eight hundred and seventy-six, and the 100 year of American Independence.

[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of May, 1876, otherwise the bill may be taken *pro confesso.*

(Signed) F. B. VINOT, *D'y Clk.*

Document marked H, No. 20. *Filed April* 28, 1880.

U. S. C. C., Dist. La. In Equity.

E. C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

HENRY C. DIBBLE, being sworn, says:

That the records of the suit, entitled Edward C. Hancock
561 *vs.* A. M. Holbrook, No. 7250, in the sixth district court of the parish of Orleans, which was offered in evidence on the trial of a preliminary motion in this case, as appears upon page 21 of the transcript of this case, as transferred from the superior and 3d district courts, is missing from the record. Affiant swears that he has made diligent search for the said record of the said suit in the said sixth district court, but without avail.

Affiant further states that he was the attorney for Edward C. Hancock, who brought said suit; that the subject-matter of the said suit was the same as that involved in this action, and that said suit in said sixth district court was dismissed when this action was brought.

(Signed) HENRY C. DIBBLE.

Subscribed and sworn before me, 20th April, 1880.
(Signed) T. V. COUPLAND,
Comm'r Circuit Court, Dist. La.

Stock-Book N. O. Picayune Printing Co., marked H, No. 21. Filed April 28, 1880.

562 NEW ORLEANS, *January 12th*, 1874.

Name, Alexander Walker.
No. 1, one.
Ten shares N. O. Picayune Printing Co.
Received this certificate, this 14th January, 1874.
(Signed) ALEXANDER WALKER.

Endorsed across face: Transferred to Chas. T. Howard December 17th, 1874.

NEW ORLEANS, *January 12th*, 1874.

Name, J. Hernandez.
No. 2, two.
Four shares N. O. Picayune Printing Co.
Received this certificate, this 6th day of April, 1874.
(Signed) J. HERNANDEZ.

NEW ORLEANS, *January 12th*, 1874.

Name, J. Hernandez.
No. 3, three.
Four shares N. O. Picayune Printing Co.
Received this certificate, this 6th day of April, 1874.
(Signed) J. HERNANDEZ.

NEW ORLEANS, *January* 14, 1874.

Name, A. M. Holbrook.
No. 4.
Sixty-three, 63, shares N. O. Picayune Printing Co.

563 Received this certificate this 14th January, 1874.
(Signed) A. M. HOLBROOK.

NEW ORLEANS, *January 14th*, 1874.

Name, Peter St. Amand.
No. 5.
One share N. O. Picayune Printing Co.
Received this certificate this 14th January, 1874.
(Signed) P. ST. AMAND.

NEW ORLEANS, *January 14th*, 1874.

Name, R. W. Holbrook.
No. 6.
One share N. O. Picayune Printing Co.
Received this certificate this 14th January, 1874.
(Signed) R. W. HOLBROOK.

NEW ORLEANS, *February 7th*, 1874.

Name, E. C. Hancock.

No. 7.
15 shares N. O. Picayune Printing Co.
Received this certificate this 7th day of February, 1874.
(Signed) E. C. HANCOCK,
Per pro JNO. H. CONNIFF.

564 NEW ORLEANS, *March 7th*, 1874.

Name, D. B. Penn.
No. 8.
1 share N. O. Printing Co.
Received this certificate this 7th day of March, 1874.
(Signed) D. B. PENN.

NEW ORLEANS, *March 12th*, 1874.

Name, Joseph Donaldson.
No. 9.
One (1) share N. O. Picayune Printing Co.
Received this certificate this 12th day of March, 1874.
Endorsed across the face, cancelled.

NEW ORLEANS, *March 12th*, 1874.

Name, Christian Mehle.
No. 10.
1 share N. O. Picayune Printing Co.
Received this certificate this 12th day of March, 1874.
Endorsed across the face, cancelled.

NEW ORLEANS, *March* 21, 1874.

Name, David Bidwell.
No. 11.
2 shares N. O. Picayune Printing Co.
Received this certificate this 21st day of March, 1874.
(Signed) DAVID BIDWELL.

Endorsed across the face: I hereby transfer this certificate of stock, No. 11, to George Nicholson. New Orleans, March 21, 1874.
(Signed) DAVID BIDWELL.

565 NEW ORLEANS, *March 21st*, 1874.

Name, George Nicholson.
No. 12.
Two (2) shares N. O. Picayune Printing Co.
Received this certificate this 21st day of March, 1874.
(Signed) GEO. NICHOLSON.

NEW ORLEANS, *May* 18, 1874.

Name, Thomas Barnes.
No. 13.
2 shares N. O. Picayune Printing Co.
Received this certificate this 18th day of May, 1874.
(Signed) THOMAS BARNES.

NEW ORLEANS, *July* 10, 1874.

Name, John C. Sinnott.
No. 14.
1 share N. O. Picayune Printing Co.
Received this certificate this 10th day of July, 1874.
(Signed) JNO. C. SINNOTT.

Endorsed across face: I hereby transfer this certificate of stock, No. 14, to John Clark. New Orleans, July 10, 1874.
(Signed) JNO. C. SINNOTT.

NEW ORLEANS, *July* 10, 1874.

Name, John Clark.
No. 15.
1 share N. O. Picayune Printing Co.
Received this certificate this 10th day of July, 1874.
Endorsed across the face: Cancelled.

566 NEW ORLEANS, *Dec'r* 12, 1874.

Name, William Mehle.
No. 16.
One share N. O. Picayune Printing Co.
Received this certificate this 12th day of December, 1874.
Endorsed across the face: Cancelled.

NEW ORLEANS, *Dec.* 17*th*, 1874.

Name, Chas. T. Howard.
No. 17.
Ten shares N. O. Picayune Printing Co.
Received this certificate this 17th day of December, 1874.
(Signed) CHAS. T. HOWARD.

Endorsed across the face: I hereby transfer this certificate of stock, No. 17, to R. W. Holbrook. New Orleans, Dec. 19, '74.
(Signed) CHAS. T. HOWARD.

NEW ORLEANS, *Dec'r* 19, 1874.

Name, R. W. Holbrook.
No. 18.
10 shares N. O. Picayune Printing Co.
Received this certificate this 19th day of December, 1874.
(Signed) R. W. HOLBROOK.

NEW ORLEANS, *Dec'r* 19*th*, 1874.

Name, F. H. Hatch.
No. 19.
1 share N. O. Picayune Printing Co.
Received this certificate this 19th day of December, 1874.
567 (Signed) F. H. HATCH,
By H. C. WARMOTH.

Endorsed across face: I hereby transfer this certificate of stock, No. 19, to Richard Fitzgerald.
(Signed) F. H. HATCH,
By H. C. WARMOTH.

New Orleans, Dec'r 19th, 1874.

Received certificate of stock, No. 19, transferred by F. H. Hatch.
(Signed) R. FITZGERALD.
Dec'r 19, '74.

NEW ORLEANS, *Dec'r 19th*, 1874.

Name, Lovell & Bailey.
No. 20.
1 share N. O. Picayune Printing Co.
Received this certificate this 19th day of December, 1874.
(Signed) LOVELL & BAILEY,
By H. C. WARMOTH.

Endorsed across face: I hereby transfer this certificate of stock, No. 20, to Peter St. Amand.
(Signed) LOVELL & BAILEY,
By H. C. WARMOTH.

Received certificate of stock, No. 20, transferred by Lovell & Bailey.
Dec'r 19, 1874.
(Signed) P. ST. AMAND.

NEW ORLEANS, *Dec'r 19th*, 1874.

Name, Effingham Lawrence.
No. 21.
1 share N. O. Picayune Printing Co.
Received this certificate this 19th day of December, 1874.
(Signed) EFFINGHAM LAWRENCE,
By H. C. WARMOTH.

Endorsed across face: I hereby transfer this certificate of stock, No. 21, to Geo. Nicholson.
New Orleans, Dec. 19, '74.
(Signed) EFFINGHAM LAWRENCE.
By H. C. WARMOTH.

568 Received certificate of stock, No. 21, transferred by Effingham Lawrence.
Dec. 19, 1874.
(Signed) GEO. NICHOLSON.

Received certificate of stock, No. 21, transferred by George Nicholson.
New Orleans, Dec. 21, '74.
(Signed) J. A. QUINTERO.

NEW ORLEANS, *Dec'r 19th*, 1874.

Name, H. L. Swords.
No. 22.

2 shares N. O. Picayune Printing Co.
Received this certificate this 19th day of December, 1874.
(Signed) H. L. SWORDS,
By H. C. WARMOTH.

Endorsed across face: I hereby transfer — of stock, No. 22, to Peter St. Amand.
New Orleans, Dec. 19, '74.
(Signed) H. L. SWORDS,
By H. C. WARMOTH.

Received certificate of stock, No 22, transferred by H. L. Swords.
(Signed) P. ST. AMAND.

NEW ORLEANS, *Dec'r 19th*, 1874.

Name, Cyrus Bussy.
No. 23.
1 share N. O. Picayune Printing Co.
Received this certificate this 19th day of December, 1874.
(Signed) CYRUS BUSSY,
By H. C. WARMOTH.

Endorsed across face: I hereby transfer this certificate of stock, No. 23, to Geo. Nicholson.
New Orleans, Dec. 19, 1874.
(Signed) CYRUS BUSSY.
By H. C. WARMOTH.

Received certificate of stock, No. 23, transferred by Cyrus Bussy.
Dec. 19, 1874.
(Signed) GEO. NICHOLSON.

569 NEW ORLEANS, *Dec.* 22, 1874.

Name, Richard Weightman.
No. 24.
8 shares N. O. P. & P. Co.
Received this certificate for Nos. 2 and 8, transferred by Joseph Hernandez.
Dec. 22, '74.
(Signed) RICH'D WEIGHTMAN.

Document marked "N, No. 13." Filed April 28, 1880.

In the Sixth District Court for the Parish of Orleans.

WILKES & HALL
vs.
ALEXANDER WALKER. } No. 2249.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *June* 13, 1876.

To Mr. ALEXANDER WALKER:

Take notice that I have seized, and in three days from the ser-

vice hereof shall proceed to advertise and sell according to law the following-described property, to wit:

All the right, title, and interest of the defendant in and to certain shares of stock of the New Orleans Picayune Printing
570 Company, and all the right, title, and interest of the said Alexander Walker, as set forth in his answer in the suit of Thomas Barnes *vs.* The New Orleans Picayune Printing Company *et al.*, No. 7824 of the docket of the U. S. circuit court for the 5th circuit and district of Louisiana, and all the right, title, and interest of the said Alexander Walker, as set forth and described in the suit of Alexander Walker *vs.* H. C. Warmoth and A. M. Holbrook, No. 7285 of the docket of the 6th district court for the parish of Orleans, and also all the right, title, and interest of the said Alexander Walker in and to the Picayune Newspaper Printing Establishment, the good-will and profits, assets, accounts thereof, with machinery and type and appurtenances thereof.

To pay and satisfy the writ issued in this case, say the sum of of $875, with interest and costs, unless the same is immediately paid.

(Sig.) C. POLLOCK,
Deputy Sheriff.

A true copy.
571 [SEAL.] (Signed.) H. MEISTIER,
D'y Clerk.

NEW ORLEANS, *June* 14*th*.

I served a copy of the within notice of seizure on Alex'r Walker, def't herein, personally.

(Signed) A. WALLACE HARTER, *D'y Sh'ff.*

In the 6th District Court for the Parish of Orleans.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *June* 13*th*, 1876.

WILKES and HALL
vs.
ALEXANDER WALKER. } No. 2249.

To Mrs. Eliza J. Holbrook, wid. and instituted heir of Alva M. Holbrook, deceased:

Take notice that by virtue of a writ of *fieri facias*, issued in the above-entitled suit, I have seized and taken in my possession all the right, title, and interest of the defendant in and to — certain shares of stock in the New Orleans Picayune Printing Co., and all
572 the right, title, and interest of the said Alexander Walker, as set forth in his answer in the suit of Thomas Barnes *vs.* The New Orleans Picayune Printing Co. *et als.*, No. 7824 of the docket of the U. S. circuit court for the fifth circuit and district of Louisiana, and all the right, title, and interest of the said Alexander Walker *vs.* H. C. Warmoth and A. M. Holbrook, No. 7285 of the docket of the 6th district court for the parish of Orleans; and, also,

all the right, title, and interest of the said Alexander Walker in and to the Picayune Newspaper and Printing Establishment, the good-will and profits, assets, accounts thereof, with machinery and type and appurtenances thereof.

(Signed) C. POLLOCK,
Deputy Sheriff.

A true copy.
[SEAL.] (Signed) H. MEISTIER, *D'y Clerk.*

573 In the 6th District Court for the Parish of Orleans.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
STATE OF LOUISIANA, NEW ORLEANS, *June* 13, 1876.

WILKES and HALL
vs.
ALEXANDER WALKER. } No. 2249.

To J. J. O'Brien, clerk of the 6th district court for the parish of Orleans:

Please to take notice that by virtue of a writ of *fieri facias*, issued in the above-mentioned suit, I have seized and taken into my possession all the right, title, and interest of the defendant in and to — certain shares of stock in the New Orleans Picayune Printing Co., and all the right, title, and interest of the said Alex'r Walker, as set forth in his answer in the suit of Thos. Barnes *vs.* The New Orleans Picayune Printing Company *et al.*, No. 7824 of the docket of the U. S. circuit court for the 5th circuit and district of Louisiana, and all the right, title, and interest of the said Alexander Walker, as set forth and described in the suit of Alexander Walker *vs.* H. C. Warmoth and A. M. Holbrook, No. 7285 of the docket of the 6th district court for the parish of Orleans; and, also, all the
574 right, title, and interest of the said Alexander Walker in and to the Picayune Newspaper and Printing Establishment the good-will and profits, assets, accounts thereof, with machinery and type and appurtenances thereof.

(Signed) C. POLLOCK,
Deputy Sheriff.

In the Sixth District Court for the Parish of Orleans.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *June* 13*th*, 1876.

WILKES and HALL
vs.
ALEXANDER WALKER. } No. 2249.

To Mrs. Eliza J. Holbrook, widow and instituted heir of Alva M. Holbrook, deceased, and Richard W. Holbrook, liquidator of the New Orleans Picayune Printing Company, and Richard Fitzgerald, liquidator of the New Orleans Picayune Printing Company, and J. J. O'Brien, clerk of the 6th district court for the parish

of Orleans, and F. A. Woolfley, clerk of the U. S. circuit court for the 5th circuit and district of Louisiana:

Take notice that by virtue of a writ of *fieri facias*, issued
575 in the above-mentioned suit, I have seized and taken in my possession all the right, title, and interest of the defendant in and to — certain shares of stock in the New Orleans Picayune Printing Company, and all the right, title, and interest of the said Alexander Walker as set forth in his answer in the suit of Thomas Barnes *vs.* The New Orleans Picayune Printing Company *et als.*, No. 7824 of the docket of the U. S. circuit court for the 5th circuit and district of Louisiana, and all the right, title, and interest of the said Alexander Walker as set forth and described in the suit of Alexander Walker *vs.* H. C. Warmoth and A. M. Holbrook, No. 7825 of the docket of the sixth district court for the parish of Orleans, and also all the right, title, and interest of the said Alexander Walker in and to the Picayune Newspaper and Printing Establishment, the good-will and profits, assets, accounts thereof, with machinery and type and appurtenances thereof.

(Signed) C. POLLOCK,
Deputy Sheriff.

A true copy.
[SEAL.] (Signed) H. MEISTIER.

576 On the 14th June, 1876, served a copy of the within notice on J. J. O'Brien, clerk of the sixth district court for the parish of Orleans, by leaving the same at his office in the hands [of] Frank Wall, his chief deputy, the said O'Brien being absent from his office at the time of service.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

N. O., *June 13th*, 1876.

Served a copy of the within notice of seizure on Richard Fitzgerald, Mrs. Eliza J. Holbrook, and R. W. Holbrook personally.

(Signed) A. WALLACE HUNTER, *D'y Sh'ff.*

And, on the 14th day of June, 1876, served a copy of the within notice of seizure on F. A. Woolfley, clerk of the U. S. circuit court for the 5th circuit and district of Louisiana, in person.

(Signed) LOUIS J. GUERIN, *D'y Sh'ff.*

577 State of Louisiana, Sixth District Court for the Parish of Orleans.

WILKES & HALL
vs.
ALEXANDER WALKER. } No. 2249.

State of Louisiana to the sheriff of the Parish of Orleans, Greeting:

We command you, that, by seizure and sale of the property, real and personal, rights and credits of defendant, Alexander Walker, in the manner prescribed by law, you cause to be made the sum of eight hundred and seventy-five dollars ($875), with legal interest

from judicial demand, to wit, February 21st, 1871, till paid, and also the sum of sixty-nine $\frac{55}{100}$ dollars costs, as well as your own costs and charges, to satisfy a judgment rendered against the said defendant, Alexander Walker, in our sixth district court for the parish of Orleans, 1st day of July, 1872, in favor of plaintiff, and how you have executed this writ, you make return to our said
578 court (within seventy days) according to law.

Witness the Honorable Arthur Sancier, judge of the said court, this 13th day of June, in the year of our Lord, 1876.

(Signed) R. K. HYAMS,
Deputy Clerk.

Received June 13th, 1876, and levied this writ on the property described in the within annexed notice of seizure and printed extract herein, which are made a part of this return, and notified personally defendant herein of this seizure; also notified of said seizure Mrs. Eliza J. Holbrook, widow and instituted heir of Alva M. Holbrook, deceased, and Richard W. Holbrook, liquidator of said New Orleans Printing Company, and Richard Fitzgerald, liquidator of said New Orleans Printing Co., and J. J. O'Brien, clerk of the 6th district court for the Parish of Orleans, and F. A. Woolt-
579 ley, clerk of the United States circuit court for the 5th circuit and district of Louisiana, as will appear by reference to the written annexed notices and the return thereon, which are also made a part of this return.

And after the legal delay had expired the said property was advertised for sale on the 24th day of June, 1876, in the following manner, to wit:

By advertisements, composed in English, and announcing the sale to take place at the Merchants' and Auctioneers' Exchange, on Royal street, between Canal and Custom-house streets, in the second district of this city.

On the 5th day of July, 1876, at 12 o'clock M., said advertisements were inserted and published in English and — in one paper in the city of New Orleans, to wit, in the New Orleans Republican, from the said 24th day of June, 1876, to the day of sale, being full ten days from the date of the first notice given in said newspaper; said advertisements were inserted and published in said newspaper on the 24, 25, 28, and 30 days of June,
580 1, 2, and 4 days of July, 1876.

And after having further complied with and performed all the additional previous legal requisites, and after the said property having been duly appraised, did expose the same at public sale according to law, at the said Merchants' and Auctioneers' Exchange, Royal street, between Canal and Custom-house streets, in the second district of this city, on the said fifth day of July, eighteen hundred and seventy-six, at 12 o'clock m., having first announced in a loud and audible voice the terms and conditions hereinafter expressed and specified, when George Nicholson, being the highest and last bidder for account of Holbrook & Co., the said property was adjudicated to the said George Nicholson for

account of said Holbrook & Co., for the price and sum of three hundred and thirty-five dollars, payable cash, which I have received.

Amount of sale		$335 00
	Out of which I deduct costs and claim, as detailed	
581	on the reverse hereof, say the sum of one hundred and twenty-one dollars and eighty cents	121 80
	Am't paid over to defendant	$213 20

Two hundred and thirteen dollars and twenty cents cash to Semmes & Mott, by order of J. E. Austin, att'y for plaintiff, on the 6th July, 1876. No other property for the balance after due demand made of both parties.

Returned August 21st, 1876.

(Signed) MICHEL DE ARMAS, *D'y Sh'ff.*

Sh'ff fee for this suit, $2.00.

A true copy.

[SEAL.] (Signed) H. MEISTIER,
D'y Clerk. 6th Dist. Court.

Charges.

Printing Republican	$16 00
Clerk's fees	69 75
Sheriff's fees, S.	9 50
Sheriff's fees, W.	9 00
Appraiser, J. A. Quintero, L. Martin	10 00
Exchange duty	85
Commission on sale	6 70
Correct, E. and O. Ex.	$121 80

(Signed) MICHEL DE ARMAS, *D'y Sh'ff.*

582 *Document marked "N, No. 14." Filed April 28, 1880.*

State of Louisiana, in the 4th District Court for the Parish of Orleans.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *22d Nov'b'r*, 1875.

THOS. HOULIHAN, N. BARRETT, sub'g'd,
vs.
N. O. HERALD PRINTING CO. } No. 42674.

To Mrs. A. M. Holbrook, universal legatee of A. M. Holbrook, deceased:

Please to take notice, that by virtue of a writ of *fieri facias*, issued in the above-mentioned suit, I have seized and taken into my possession all the right, title, and interest of the defendant herein, the New Orleans Herald Printing Company in and to the New Orleans

Picayune Newspaper Printing Establishment, the good-will, stock in trade, property and appertenances thereto belonging, be-
583 ing the same property, rights, &c., which were seized and sold at a judicial sale, under a writ issued from the sixth district court for the parish of Orleans, at the suit of John Phelps *vs.* New Orleans Printing and Publishing Company, No. 4979 on the docket of that court, and which property was acquired on the 16th December, 1873, by said New Orleans Herald Printing Company, at twelve months credit, for which a twelve months bond was executed according to law.

(Signed) C. POLLOCK,
Deputy Sheriff.

Document Marked "N, No. 15." Filed April 28, 1880.

Sixth District Court.

WILLIAM A. WEED
vs.
HERALD PRINTING CO. } No. 5676.

Judgment rendered March 2d, 1874.

In this case the court considering that the law and the evidence sustain plaintiff's demand, it is ordered, adjudged, and decreed, that there be judgment herein in favor of plaintiff, William
584 A. Weed, and against defendant, the "Herald Printing Company," for the sum of nine hundred and ninty-nine $\frac{68}{100}$ dollars, with legal interest from 26th April, 1873, until paid, and costs of suit.

Judgment signed 9th March, 1874.

(Signed) A. SANCIER, *Judge.*

Document marked "N, No. 16." Filed April 28, 1880.

WILLIAM A. WEED
vs.
HERALD PRINTING CO. } No. 5676.

Judgment rendered 2d January, 1875.

For the reasons this day orally assigned by the court, it is ordered, adjudged, and decreed that J. S. Rivers, substituted plaintiff, and herein subrogated, do recover of the garnishee, H. C. Warmoth, the sum of nine hundred and ninety-nine $\frac{16}{100}$ dollars, with legal interest from the 26th day of April, 1873, until paid, and costs of court.

Judgment signed 7th January, 1875.

(Signed) A. SANCIER, *Judge.*

585 *Decree Dismissing Bill. Entered and Filed March 13th, 1881.*

In the Circuit Court of the United States for the Eastern District of Louisiana.

EDWARD C. HANCOCK
vs.
Mrs. E. J. HOLBROOK *et als.* } No. 8320.

This cause came on to be heard and was argued by counsel, and

thereupon, upon consideration thereof, the court was of opinion that the demand of complainant should be disallowed and rejected, and it was finally ordered, adjudged, and decreed that his bill be dismissed at his costs, to be taxed.

New Orleans, 13th May, 1881.

(Signed) EDWARD C. BILLINGS, *Judge.*

Motion and Order for Appeal.

Extract from the Minutes, April Term, 1881.

NEW ORLEANS, THURSDAY, *March 19th*, 1881.

Court met pursuant to adjourment. Present: Hon. E. C.
586 Billings, district judge.

EDWARD C. HANCOCK
vs.
Mrs. ELIZA JANE HOLBROOK *et als.* } No. 8320.

And now comes the complainant, by Henry C. Dibble, his solicitor, and suggesting to the court that the complainant feels aggrieved by the final decree entered herein at the present term of this court dismissing complainant's bill of complaint herein, and that he is advised that there is error in said decree to his prejudice and desires to appeal therefrom, and moves the court that the complainant be allowed and granted an appeal from said final decree herein as it appears of record in this court, duly entered at the present term of this court, to the Supreme Court of the United States, returnable at the next regular term of said Court. And the court considering said motion in open court, does grant and allow said complainant said appeal, as prayed for, returnable in said Supreme Court,
587 at its next regular term, to be holden at Washington, and that the complainant give bond, with good and sufficient surety, in the sum of five hundred dollars, conditioned as the law directs.

Bond for Appeal. Filed June 21st, 1881.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Edward C. Hancock, as principal, and Theodore Hein, as surety, are held and firmly bound, jointly and severally, unto Eliza J. Holbrook, now Eliza Jane Nicholson, George Nicholson, and Charles T. Howard in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Eliza J. Holbrook, now Eliza Jane Nicholson, George Nicholson, and Charles T. Howard, their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

588 Sealed with our seals, and dated the nineteenth day of May, in the year of our Lord eighteen hundred and eighty-one.

Whereas the said Edward C. Hancock having heretofore to wit, on the — day of ———, 187 , taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered the April term of 1881, by the circuit court of the United States for fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Edward C. Hancock *vs.* Mrs. Eliza J. Holbrook, now Eliza J. Nicholson, George Nicholson, and Charles T. Howard, No. 8320 of the docket thereof.

Now, the condition of the above obligation is, that if the above bounden Edward C. Hancock shall prosecute his said appeal to effect, and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, but otherwise shall remain in full force and virtue.

(Signed) E. C. HANCOCK,
By J. R. BECKWITH, *Att'y.* [SEAL.]

589 (Signed) THEODORE HEIN. [SEAL.]

UNITED STATES OF AMERICA, }
Eastern District of Louisiana, } *ss:*

Personally appeared Theodore Hein, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides at No. 145 Carondelet street, city of New Orleans, State of La., and is worth the full sum of five hundred dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) THEODORE HEIN.

Subscribed and sworn before me, this 21st day of June, 1881.

(Signed) T. V. COUPLAND,
Commissioner U. S. Circuit Court, District of Louisiana.

590 United States of America, Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 589 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Edward C. Hancock *vs.* Mrs. Eliza Jane Holbrook *et al.*, No. 8320 of the docket of the said court, except the answer of E. C. Hancock filed in the case of Thomas Barnes *vs.* New Orleans Picayune Printing Co. *et al.*, No. 7824 of the docket of this court, marked H, No. 18, mentioned in agreement filed April 28th, 1880, which answer is lost or mislaid and cannot be found after due and diligent search.

Witness my hand and the seal of said court at the city of New Orleans, this 29th day of Sept'r, A. D. 1881.

(Eight (8) words erased approved.)

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 29th day of Sept'r, A. D. 1881.

EDWARD C. BILLINGS, *Judge.*

591 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Mrs. Eliza Jane Holbrook, now Mrs. Eliza Jane Nicholson, George Nicholson, and Charles T. Howard, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a motion and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Edward C. Hancock is complainant and appellant and you, and each of you, are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said Edward C. Hancock, as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of July, in the year of our Lord one thousand eight hundred and eighty-one.

EDWARD C. BILLINGS, *Judge.*

592 Endorsed: Mrs. Eliza Jane Holbrook, now Mrs. Eliza Jane Nicholson, George Nicholson, and Charles T. Howard. United States circuit court. No. 8320. Edward C. Hancock, complainant and appellant *vs.* Mrs. Eliza Jane Holbrook *et al.*, defendants and appellees. Citation.

Marshal's Return.

Received July 18, 1781, by the U. S. marshal, and I served true copies of the within motion and order for appeal on the appellees herein named, as hereinafter set forth, Mrs. Eliza Jane Holbrook, now Mrs. Eliza Jane Nicholson, George Nicholson, and Charles T. Howard, as follows, to wit: Robert Mott, Esq., personally, July 21st, 1881; Thomas J. Semmes, Esq., personally, July 22d, 1881; Joseph P. Hornor, Esq., personally, Aug. 10th, 1881; the aforesaid Robert Mott, Thomas J. Semmes, and Joseph P. Hornor, attorneys for appellees, accepting service for said appellees, who were absent from the district at the time of said service; all were served in the city of New Orleans, eastern district of Louisiana, as above set forth.

E. S. CURRY,

Dy U. S. Marshal in and for Eastern Dist. of La.

Personally appeared before me, E. S. Curry, a lawful deputy of Jack Wharton, U. S. marshal for eastern district of Louisiana, and makes oath that he served true copies of the within motion and order for appeal on the appellees herein named, as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal in and for Eastern Dist. of La.

Subscribed and sworn before me, August 15th, 1881.
T. V. COUPLAND.
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 377. Edward C. Hancock, appellant, *vs.* Mrs. Eliza Jane Holbrook, now Mrs. Eliza Jane Nicholson, George Nicholson, and Charles T. Howard. Filed October 10, 1881..

112-229

RECEIVED
OCT 28 1884
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 65.

EDWARD C. HANCOCK, APPELLANT.

VS.

ELIZA JANE HOLBROOK,
GEORGE NICHOLSON, AND CHARLES T. HOWARD,
APPELLEES.

SUPPLEMENTAL BRIEF.

THOS. J. SEMMES,
For Appellees.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 65.

EDWARD C. HANCOCK, APPELLANT.

VS.

ELIZA JANE HOLBROOK,
GEORGE NICHOLSON, AND CHARLES T. HOWARD,
APPELLEES.

SUPPLEMENTAL BRIEF.

The appellant says in his brief that the Picayune Company's condition at the time of the sale to Hernandez in December, 1874, was not such as to justify the conduct of the Picayune Company—that it was not insolvent, and that its embarrassment is not alleged in the answer.

The answer on that subject is as follows: "and respondent avers that when the said Herald Company sold the said Picayune establishment to said A. M. Holbrook said Company was insolvent, and when the Picayune Printing Company was organized it had no money or capital; the stockholders of the Herald Company formed themselves into the Picayune Company having left all the property thereof to the creditors of the Herald Company, and the newspaper itself being a thing dependent for success on its popularity and good management,

could not succeed when two of its principal proprietors were its declared enemies, and so acting as to prevent success; whence *it failed*, and when the said corporation was dissolved at the meeting of stockholders in 1874 it had no assets of value." P. 31.

Again the answer avers that the Picayune Company at the time of its creation had no money or credit, and Holbrook was called upon and did furnish the same, and maintained said establishment through his means and credit, and by borrowing money therefor. P. 33.

The resolution authorizing the sale to Hernandez in payment of the bond, expressly declares that the Picayune Company "has not the means to satisfy said bond." P. 5. This resolution is inserted in the bill of complaint as part thereof.

Hancock, himself says: the Picayune newspaper when sold in 1873 was run down, and while a most valuable newspaper to newspaper men, was not worth more than $20,000 except to newspaper men. P. 60.

If the paper had been worth more than the amount bid for it, the arrangement whereby Holbrook was induced not to bid at the Sheriff's sale would have been a fraud; this arrangement is stated in the bill. P. 29.

The bill says: the fifty shares of stock in the Picayune Company, which were allotted to the then stockholders of the Herald Company, were considered an equivalent for the excess in value of the Newspaper over the price paid for it at Sheriff's sale, and said shares were a recompense to the Stockholders of the Herald Company. P. 3. If this be

so, as the Herald Company was insolvent; the extent to which its stockholders were to be recompensed out of a transfer of its property, was a fraud on its creditors.

The truth is the paper was worth no more than the $20,000 bid for it; its value depended on successful management; its management failed because of internal discord and other causes; Mr. Nicholson swears the paper made no money in 1874-5, that it did not pay expenses, p. 155. Mr. Holbrook had to advance money and he was the only stockholder who advanced a single cent.

He further says, that in consequence of the dissolution of the Herald Company, its advertising list had to be carried by the Picayune without compensation, and all the subscriptions to the Herald had been paid in advance or were deadheads, p. 156. In support of Nicholson's testimony is the significant fact, that the books of the Picayune Company were produced on the call of the complainant, and no reference is made to them as in any manner impairing the accuracy of his statements—see production of books, p. 106, and the call for them, p. 66.

Respectfully submitted,

THOS. J. SEMMES,

Of Counsel for Appellees.

112-229

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1884.

No. 65.

EDWARD C. HANCOCK, *Appellant*,

versus

MRS. ELIZA JANE HOLBROOK, ET. AL., *Appellees*,

J. D. ROUSE,
WM. GRANT,
Of Counsel.

Armstrong & Co., Stationers and Printers, 60 Carondelet St., N. O.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1884.

No. 65.

EDWARD C. HANCOCK, *Appellant*,

versus

MRS. ELIZA JANE HOLBROOK, ET. AL., *Appellees*,

Brief of J. D. ROUSE & WM. GRANT, *in behalf of the Appellant.*

STATEMENT.

Prior to December 19th, 1873, the New Orleans Picayune Newspaper and Printing Establishment was sold under writ of *fi. fa.* by the sheriff, to the Herald Printing Co. for $20,000 on twelve month's bond under the laws of Louisiana, which bond Jos. Hernandez signed as surety.

Thereupon, the Herald Co. took possession thereof, and continued the publication of the Picayune Newspaper, and conducted the business of said printing establishment.

Said Company, prior to that time, was engaged in the publication of the New Orleans Herald, which it then discontinued and merged in the Picayune.

Through the negotiation of Gov. H. C. Warmoth, at whose instance Hernandez became surety upon said bond, said Herald Co., sold and transferred said Picayune Newspaper

and Printing Establishment to A. M. Holbrook in consideration of his assumption of the payment of said twelve months bond, and his deposit of securities, for such payment, with, and satisfactory to said Hernandez, surety thereon, and in further consideration that said Holbrook would sell and assign said property to a new corporation to be formed with a capital of $30,000, divided into one hundred and twenty shares of $250 each, of which said Holbrook was to receive sixty-five shares as the price of said property; and the other fifty-five shares were to be divided among the stockholders of the Herald Company in consideration of the value of said property in excess of the price at which they acquired it, and its enhancement by reason of the merger of the Herald (a rival newspaper) therewith.

The new corporation was formed, called the New Orleans Picayune Printing Company; and the Picayune Newspaper and Printing Establishment, with which the Herald Company had already consolidated its newspaper,-and interests, was transferred to said new corporation, and the stock distributed, in accordance with the understanding above stated, the complainant being assigned fifteen shares; and he afterwards acquired five other shares.

The articles of association signed by said Holbrook recite the sale of said property by Holbrook to said Company for $30,000, which he acknowledges to have received. R. p. 12.

Holbrook caused two of his shares to be issued, one each, to R. W. Holbrook and P. St. Amand, (one his brother—both his employees.) who with himself were made directors, and composed a majority of the board, of which A. M. Holbrook was President.

Being thus in control of said Picayune Printing Company, Holbrook conceived the idea of transferring its whole property to himself, in fraud—as the bill charges—of the complainant and all other stockholders.

In pursuance of this scheme, he convened a meeting of directors, where by the votes of himself, his brother and St. Amand, a preamble and resolution were adopted, reciting the approximating maturity of said twelve months bond, the inability of said Holbrook and said Picayune Company to pay the same, and authorizing said Holbrook to sell and transfer said Picayune Newspaper and Establishment to said Hernandez in satisfaction of his claim as surety in case he should pay it.

Next day said A. M. Holbrook made a transfer in writing of said property to Hernandez, but remained in possession thereof. R. p. 123.

He thereupon called a meeting of stockholders December 22d, 1874, at which himself, his brother, St. Amand, and Weightman, to whom he transferred shares for the purpose, held all but four shares present, and they voted to ratify his transfer of the property to Hernandez and to dissolve the corporation. R. pp. 124–5. The plaintiff was not present or consenting.

The same day—whether before or after said stockholders, meeting does not appear—Hernandez at the instance of Warmoth, who had furnished the money to pay the bond, transferred said property to said A. M. Holbrook, who held possession thereof—claiming sole ownership—until his death, when the defendant Mrs. E. J. Holbrook by virtue of his will instituting her his sole heir and universal legatee, took possession, and she and the defendant Geo. Nicholson, to whom she transferred one-fourth interest, are still in possession thereof.

The price for which Hernandez transferred said establishment to Holbrook was stated to be $20,220, but the real price was $32,500 of which he paid $5,000 cash to Warmoth, and gave him his notes for the balance—$27,500—to be paid out of the earnings of the property, and they have been so paid.

There was a decree dismissing the bill, and the plaintiff appealed, and assigns said decree as error.

ARGUMENT.

In addition to the argument of senior counsel for the appellant, we desire to submit some suggestions, and briefly reply to the propositions advanced by counsel for the appellees.

The bill presents a case where a single stockholder in a body corporate, holding a majority of its capital stock, and being president of its board of directors, applied the whole of the corporate property to the payment of his individual debt, and immediately repurchased the same, and continued in the possession which he had acquired as the head of the corporation, under a claim as sole owner.

The plaintiff, a stockholder in the corporation so despoiled, seeks redress in this action, because through the controlling power of the spoliator, and as a part of the scheme by which he so appropriated its property to himself, he dissolved the corporation, and made it impossible for the plaintiff to obtain redress through corporate action.

I.

The trust character of directors is involved in the very organization of a corporation: they are *quasi* trustees for the corporation with respect to the corporate property, and for the stockholders for their shares of stock. 3 Pomeroy's Eq. Jurisp., sec. 1088.

Their duties are fiduciary, and equitable remedies arise for a violation of those duties. *Ibid*, sec. 1090. Whenever the acts of the directors are such as to directly and primarily affect the interest of the stockholders in their shares of stock by impairing their proprietary rights in it, they may maintain equitable suits for relief: but ordinarily when the breach of trust consists in wrongful dealing with the corporate property or franchises, the corporation must institute any equitable suit for relief. But where, in such cases, corporate action has become impossible, the stockholders may commence the action in

their own names. *Ibid*, sec, 1091. And where such a fraudulent transaction is completed or contemplated by the actual managers, in connection with some other party, or among themselves, or with other shareholders, as will result in serious injury to the corporation, or the interests of other shareholders, or where the board of directors, or a majority of them, are acting for their own interests in a manner destructive of the corporation itself, a stockholder may himself bring suit for his protection. *Hawes vs. Oakland*, 104 U S. Rep., 450.

And whenever the plaintiff's petition discloses any condition of fact, showing that a suit by the corporation would be impossible, and that a demand therefor would be nugatory, the action may be maintained, without averring demand or other proceeding on the part of the stockholder. Pomeroy, sec. 1095, and note 1, citing numerous cases.

The law of Louisiana, where this corporation existed, affords another ground for the maintenance of the plaintiff's action, because upon the dissolution of the corporation the property thereof became vested in its members. *Burke vs. Wall*, 29 La. Ann., 38; *Stark vs. Burke et al.*, 5 La. Ann., 740; *Citizen's Bank vs. Levee St. Cotton Press Company*, 7 La. Ann., 286.

In view of the foregoing authorities and the facts of this case, the right of the plaintiff to seek redress, as he has done, by his bill, is undoubted.

II.

The facts as stated at the outset in this brief, are—we believe—undisputed, except that defendants deny that Holbrook was actuated in the premises by any fraudulent purpose. In view of the facts this denial amounts to nothing.

He was the controlling officer of the corporation, and as such his position was one of trust and confidence. His action resulting in the destruction of the corporation and the appropriation of all its assets to his own use, in violation of his duty as trustee, was constructively fraudulent, no matter what his

purpose was. The proposition that he as an owner of a majority of the stock could give legal sanction to, or ratify such action, is contrary to all the authorities.

The holders of a majority of the stock of a corporation may legally control its business. But in assuming the control, they also take upon themselves the correlative duty of diligence and good faith. They cannot lawfully manipulate the business in their own interests to the injury of other corporators. They cannot legally appropriate the corporate property to themselves, or make any disposition of it for their private benefit. *Meeker et al. vs. Winthrop Iron Co. et al.*, 17 Fed., R., 17.

The law always condemns the transactions of parties in their own behalf when, in respect to the matter concerned, they are the agents of others. *Wardwell vs. Railroad Co.*, 103 U. S., 658.

Holbrook's action is attempted to be defended upon the pretence of a desire on his part to protect Hernandez, surety upon the twelve months bond.

The shallowness of this pretence is manifest. Hernandez signed the bond at the request of Warmoth, with whose guaranty he was satisfied. (See his evidence, pp. 98 and 185). Holbrook also guaranteed him against loss on the bond, and secured him by deposit of mortgage notes. (P. 98).

Defendant's answer admits (p. 32), that Warmoth furnished Hernandez with the money with which he paid the bond. This was done upon the demand of Hernandez, "that he would keep good his understanding to hold him harmless." (R. p. 81).

The preamble to the resolution of December 14, 1874, reciting that Holbrook was unable to pay said twelve months' bond, which was adopted by the vote of Holbrook, his brother, and St. Amand, was manifestly false.

He had deposited with Hernandez mortgage notes, ample to secure him. Within a week he purchased the property at

the price of $32,500, paying $5,000 cash (Ans. 27). About two years prior thereto he had sold the same property for $100,000, "*and received the money*;" (Ans. p. 28), and he owned the "Picayune" buildings, which he leased to the purchaser at $4500 per annum. R., p. 192. In January, 1876, his estate was appraised at $79 556 25. (R., p. 138.)

It is also contended, that by paying the bond as surety, Hernandez acquired a right to the property, or in the language of the answer (p 32): "He had paid for the property and it was proper that he should have it."

The surety upon a twelve months bond, who pays the same, is subrogated to the creditor's rights *in the bond itself*, and to nothing more. *Trent vs. Calderwood*, 2 La. Ann., 942; *Tardy vs. Allen*, 3 La. Ann., 66; *Old vs. Chambliss*, 3 La. Ann., 206; *Crow vs. Walsh*, 3 La. Ann., 541.

The only exception to this rule is when the judgment debtor is the principal upon the bond, in which case he is subrogated to the rights of the judgment creditor. *Wilkins vs. Bobo*, 13 La. Ann., 430. In the former case he may enforce the bond against the principal; in the latter the judgment also. In neither case does it give him any title to the property; for that, the bond was substituted.

III.

Counsel for defendants (Mr. Semmes), in his brief, at p. 17, contends that the transaction between Holbrook and Hernandez amounted to this: A voluntary rescission of the sale from the Herald Co to him, for non-payment of the price, and a resale to Hernandez, in settlement of the Herald Company's liability as principal upon the bond which he had paid as surety. In order to support this theory, the learned counsel found it necessary to assume, that the Herald Company and the Picayune Printing Company were one. If this were so, then Holbrook, a trustee of said company, agreed with himself, to release himself from the payment of the price of the property,

which he had bought, and sold again. It is elementary that a person cannot act for himself, with respect to the same matter, as the agent of another whose interests are conflicting. 103 U. S., 658.

The Herald Co. was still in existence, and instead of selling to Hernandez, he offered to sell the property to it. Ans. p. 32.

The Picayune Company was in no legal sense its successor. If it had been the case would not be different. The right to dissolve a sale for non-payment of the price cannot be transferred. The resolutory condition can be enforced only by the vendor. *Swan vs Gayle*, 24 La. Ann., 498. The parties must be the same. *Augusta Ins. Co. vs. Packwood*, 9 La. Ann., 75.

The property sold was movable property; Holbrook, the vendee of the Herald Co., had resold and transferred the same to the Picayune Printing Company. The resolutory condition cannot be enforced in case of movables, when they have been transferred to third persons. *Lalance vs. Wolf*, 28 La. Ann., 942; *Wilmot & Co. vs. Ouachita Belle*, 32 A., 611. A sale cannot be annulled for non-payment of the price when the parties cannot be put in the same condition they were before the sale was made. *Bermudez vs. Union Bank*, 7 La. Ann., 65.

The learned counsel also advances another theory, viz: That the property went into the hands of the Picayune Co., subject to a privilege in favor of the Herald Co. as Holbrook's vendor, for the unpaid price, and Hernandez having paid the bond was subrogated to the privilege in favor of the Herald Co.

The theory rests upon error. The vendor's privilege upon movables continues only while they are in the vendee's possession; *Flint & Jones vs. Rawlings*, 20 La. Ann., 557; *Penn vs. Ott*, 12 La Ann., 233; Ray's Code, Art. 3217, 3227; and should have been recorded, to affect third persons. 20 La. Ann., 714.

We have shown *supra* that by payment of the bond Hernandez became subrogated to the bond itself and nothing more.

IV.

Counsel for the appellees contend that the appellant admits the liability of the Picayune Company to Hernandez for the amount of the twelve months bond. The supposed admission is found in paragraph 23 of the bill.

The whole averment must be taken together. As a proposition of law the complainant's solicitor assumed and averred; that the failure of Holbrook to pay the twelve months bond, worked of itself, a forfeiture of the stock of the Picayune Co., issued to him, and then averred "but for this," i. e., and because of this, he "admits that in equity and good conscience" the Picayune Company owed to Hernandez the amount paid by him in discharge of said bond.

It will be observed that no legal liability is admitted, but only that cognizable *in foro conscientiæ;* that admission being induced by error of law. A party is not bound by an admission under mistake of law. *Pearce vs. Grove*, 3 Atk., 523; *Union Bank vs. Bush*, 36 N. Y., 637; *Chatfield vs. Simonson et al.*, 92 N. Y., 218.

The construction appellees put upon the alleged admission, renders the paragraph inconsistent with the whole tenor of the bill, and contradictory of the next preceding averment, that said Picayune Company "was in no wise bound" for the debt. Ambiguous language contradictory and repugnant to something precedent, shall not defeat the precedent matter, but that which is contradictory shall be rejected. 1 Chitty's Pl. 231; 1 Salk, 324, and a declaration containing allegations capable of being understood in two senses must be construed in the sense that will sustain the action. *Emmens vs. Elderton*, 13 C. B., 541. And a complainant in equity may have relief even against the averment of his bill. *Finley vs. Lyon*, 6 Cranch 238; 19 How., 173.

V.

The respondents impute laches to the complainant because *this* suit was not commenced until 1876. Counsel asserts that

complainant "stood by for twenty-two months without one word of complaint" before he sought to annul the transaction.

Counsel ignores the record which discloses that he brought suit against Holbrook for the same matter January 22, 1875, only *eleven days* after the alleged sale by Hernandez to Holbrook, which suit remained pending until dismissed on the very day this one was instituted. (R., pp. 17 and 196).

VI.

Even if Holbrook's disposition of the property of the Picayune Co. had vested a legal title in his vendee, it being trust property, when he reacquired it, the trust again attached, and he would be estopped from asserting his title against the *cestui que trust*.

"Whenever a trustee is guilty of a breach of trust by the sale of the trust property * * * if afterwards he should repurchase, or otherwise become entitled to the same property, the trust would revive and reattach to it in his hands; for it will not be tolerated in equity, that a party shall, by his own wrongful act acquire an absolute title to that, which he is in conscience bound to preserve for another. 2 Story's Eq. Jurisp., sec. 1264.

Mrs. Holbrook succeeded to the estate of her deceased husband, as universal legatee, and thus acquired the Picayune affected with the trust. As universal legatee she became liable for the debts of the testator. *Succession of Milne*. 2 Rob., 382. Ray's Code, Art. 1611.

The representatives of a deceased trustee are liable to the extent of the assets for a breach of trust committed by the decedent in his life-time. 2 Perry on Trusts, 877; Hill on Trusts, 520; *Hazard vs. Durant*, 19 Fed. Rep., 471.

Nicholson acquired his interest in the property *pendente lite*, with full knowledge of its trust character, and therefore

took it subject to the trust. 2 Perry on trust, 810, 814, 828; *Kitchen vs. Bedford.* 13 Wall. 413.

Under the circumstances and the law of the case, the complainant is clearly entitled to relief, and the decree dismissing his bill should be reversed, and the defendants required to account for the trust property and the profits thereof.

Respectfully Submitted,

J. D. ROUSE,

WM. GRANT,

Of Counsel.

112-229

Supreme Court, United States.

No. 377.

EDWARD C. HANCOCK, *Appellant*,

vs.

MRS. ELIZA JANE HOLBROOK, now MRS. ELIZA JANE NICHOLSON, and CHARLES T. HOWARD et al.

BRIEF FOR APPELLANT.

JEFF. CHANDLER,
EPPA HUNTON,
Att'ys for Appellant.

Supreme Court United States.

EDWARD C. HANCOCK, *Appellant*,

vs.

MRS. ELIZA JANE HOLBROOK, now MRS. ELIZA JANE NICHOLSON, and CHARLES T. HOWARD et al.

No. 377.

This suit was instituted by petition before the Judge of the Superior District Court, parish of Orleans, by Edward Hancock, in which petition it was alleged that on the 19th day of December, 1873, there was in due form of law created a private corporation designated as the New Orleans Picayune Printing Company, its object being to print a daily newspaper and carry on printing business. It is alleged that there then existed the Herald Printing Company, then Publishing the *New Orleans Herald*. That prior to December 19, 1873, the Picayune newspaper was published by the Picayune Printing and Publishing Company, which was then in an embarrassed and bankrupt condition. That prior to December 19th, 1873, the Picayune newspaper was sold under execution on a credit of 12 months to the Herald Printing Company, for which said company gave bond signed as

security by Joseph Hernandez. The Herald Company took possession. While so in possession, propositions were made to the officers and directors of the Herald Company, by Henry C. Warmoth, in behalf of Alva M. Holbrook and of Joseph Hernandez and in behalf of Warmoth himself that said Picayune establishment should be transferred by the Herald Company to A. M. Holbrook in consideration that Holbrook assume the payment of the $20,000 on which Hernandez was surity, in lieu of the Herald Company. As a part of said proposition a new corporation was to be formed, to which Holbrook was to transfer said printing establishment. Said proposition was accepted. Corporation was formed with stock of 120 shares of $250 each. That Holbrook, in consideration of his payment of said debt and the transfer of said establishment to said new company, was to have and did have 65 shares full paid stock of said company, and the other stockholders of said Herald Company were to and did have 55 shares, all to be full paid up. The 55 shares was an equivalent for the excess in value of said newspaper establishment of the price for which it had been purchased at sheriff's sale, and a recompense to the stockholders of the Herald Printing Company for the dissolution of said company and the consolidation of said company with the new company. Petition alleges that by said transaction the $20,000 did not become the debt of the new company, but remained the debt of the Herald Company, and the personal debt by assumption thereof of Holbrook and Hernandez, as surity of Warmoth. Plaintiff, by virtue of his interest in the Herald Company and the terms of the charter of the new company, became the owner of 15 shares of stock in the new company, and was so recognized, since which time he became

the owner of 5 additional shares, that said shares are worth $1,200 per share. Said new company organized. Holbrook was chosen president. The business thereof prospered and large assets accumulated. The directors of said company were A. M. Holbrook, Peter St. Armand, R. W. Holbrook, Alexander Walker and petitioner. Armand and R. W. Holbrook were not bona fide stockholders, being only employees of A. M. Holbrook, who placed a share of stock in the hands of each to the end that he might elect them directors to give preponderating influence to his stock, and with a view of perpetrating a fraud upon petitioner. That said A. M. Holbrook combined with said St. Armand and R. W. Holbrook to vest in himself the entire property of said new company in disregard of the rights of petitioner and other stockholders of said company. That in pursuance of said scheme he convened a meeting of the board of directors on the 4th of December, 1874, and by resolution thereof declared the inability of himself, A. M. Holbrook, to pay the $20,000, and authorized himself as president to transfer all the property of the new company to Hernandez that he might pay the $20,000. There were present at said meeting of the board A. M. Holbrook, St. Armand and R. W. Holbrook and Walker, who protested against the action of the board; that the resolution was adopted by the vote of A. M. Holbrook, St. Armand and R. W. Holbrook; that petitioner has at all times protested against such action of said board. On the 15th day of December, 1874, A. M. Holbrook announced himself in possession of said establishment as the agent of Hernandez, although said bond for $20,000 was not due, and the Picayune company had in no way become liable therefor, and thereby converted and misapplied said property.

On the 18th day of December, 1874, said A. M. Holbrook convened an illegal meeting of the stockholders, at which meeting, by the vote of persons not entitled to vote, it was declared that the said Picayune company was dissolved, and that R. W. Holbrook and Nicholson, accomplices of A. M. Holbrook, were appointed commissioners to liquidate its affairs. Said meeting was controlled and directed by A. M. Holbrook, who had already fraudulently and illegally conveyed all the property of the said company to Hernandez. Petitioner avers that he was not in any way bound by said action; that immediately thereafter Hernandez conveyed the Picayune newspaper establishment to A. M. Holbrook for the stated sum of $20,220, to be paid in monthly instalments from the earnings of the establishment, which establishment and its earnings had never ceased to be the rightful property of the said Picayune Printing Company and its stockholders; that Mrs. Eliza Jane Holbrook, widow of A. M. Holbrook, now is in possession of said establishment, and Geo. Nicholson claims some interest therein. Petitioner alleges that Holbrook received said property in a fiduciary capacity for the benefit of said corporation; that the transfer of the same by Hernandez to Holbrook was with full knowledge of the trust on the part of Hernandez, and that the $20,000 debt was the personal debt of Holbrook, and not of the Picayune Company. Petitioner declares that A. W. Holbrook, at the time of the pretended stockholder's meeting, was not a stockholder, because he had received his 65 shares of stock in consideration that he would pay the $20,000 bond, and having failed and refused so to do had forfeited his right to the said stock. Petitioner says and admits that in equity and good conscience, and notwithstanding the fraudulent and illegal combinations

and transactions of said A. M. Holbrook with said Hernandez, Nicholson, St. Armand and R. W. Holbrook, nevertheless the said New Orleans Picayune Printing Company and the holders and owners of the remaining 51 shares of stock owed to Hernandez or legal assigns the amount of money which Hernandez paid for the discharge of the said 12 months' bond, which was in equity the debt of the Picayune Company as successor of the Herald Company, but claims that from such amount should be deducted any amount which may have been paid to Hernandez under the said illegal and fraudulent transfer contracted between Holbrook and Hernandez, whereby said Hernandez assumed to transfer the said property to Holbrook for the sum of $20,220.

Petitioner avers that 4 shares of the 120 shares had reverted from McComb to the company and the 65 shares of Holbrook, leaving 51 shares only of said stock, of which petitioner owns and holds 20 shares. He avers that the Picayune Co. has, by the fraudulent machinations of Holbrook, become disorganized, and there remains no proper officer or corporate authority to assert its rights in a court of justice or to have care of its property, as the president and directors have proved recreant to their trusts, and that he has no adequate remedy at law. He avers that C. T. Howard is successor to all the rights of Hernandez growing out of said transactio..s; that the widow of Holbrook is in possession with Nicholson of said property under some pretended transfer by Holbrook, and Mrs. Holbrook claims to be the owner; that said property is not encumbered except so far as said Howard, assignee of Hernandez, has a claim against it. Petition says it is necessary to have a receiver for said property and an injunction against Mrs. Holbrook, Nicholson, and Howard; wherefore he prays that the

parties be cited to appear. Petitioner amends his petition afterwards and asked for an accounting.

Chas. T. Howard answered said petition, and after denying the same, averred that he held 15 notes of A. M. Holbrook, secured by a written pledge of the property described in the petition; that said notes were executed to Hernandez, who, on the 22d December, 1874, transferred the same to Warmoth, who, on June 20th, transferred them to said Howard; that said Howard, on 16th of October, 1875, furnished New Orleans Picayune newspaper establishment $4,500, and it was orally agreed that said pledge should extend to that sum also; that said notes were given to Hernandez as a part of the purchase money, and said Howard claimed a vendor's lien on said property, and alleged that the appointment of a receiver would deprive him of his pledge. The case was then transferred to the Federal court.

Eliza Jane Holbrook answered said petition and admitted the formation of the Picayune Printing Company as alleged, also that the Herald Company existed as alleged, and that prior to December 19, 1873, the Picayune was published as alleged and that the establishment was sold as alleged; that the Herald Company bought it as set forth and alleged and took possession of it. She says that she knows nothing of the propositions mentioned in the bill as set forth in the 7, 8, 9 and 10 averments further than the written contracts of the parties set forth the same and avers that all the transactions were reduced to writing. Admits the shares of stock were each $250 and that said Company took possession of the Picayune establishment. Denies that the revenues of the paper were sufficient to operate it. Says she knows nothing of the directory of the Company except as shown by the record. Denies that Holbrook confedera

ted as alleged. Admits the resolution copied in the petition of December 14, 1874. Admits also stockholders' meeting. Admits that Holbrook took possession of the property as agent of Hernandez. Denies that he bought the establishment from Hernandez for $20,220 but alleges that he paid $32,500 therefor and took possession thereof as owner. Denies that Holbrook came into possession of said property in a fiduciary capacity, or that Hernandez had knowledge thereof. Denies that Holbrook was not a stockholder at the date of the stockholders' meeting and avers that none of the stockholders paid anything for their stock.

Denies there was any fraud or wrong, or that Holbrook's stock reverted to the Picayune Printing Company as alleged. She then sets up what she says were the facts of the case. That Holbrook once owned the paper but sold it for $100,000. Parties buying it failed. Paper was sold as alleged to Herald Company ; Hernandez become surety at instance of Warmoth who agreed to hold Hernandez harmless. Says Warmoth was stockholder in Herald Company. That plaintiff held stock in Herald Company but only gave some material for it. That there was left unsubscribed 80 shares. That in some way 65 of these shares went to Warmoth, who appeared on stock books to own them. That Holbrook gave Warmoth his note for $5,000 for said 65 shares. That this was part of the transaction by which Holbrook became owner of the New Orleans Picayune newspaper establishment which was accomplished by Warmoth. Previous to the sale by sheriff, Holbrook told Warmoth that he, Holbrook intended to buy the paper at sheriff's sale and that he had applied to Hernandez to go on his bond for the purchase, whereupon Warmoth declared if Holbrook would not bid, he, Warmoth, would buy and

secure a controlling interest therein. After the sale Warmoth offered to carry out said agreement by having the Herald Company transfer said property to Holbrook, so that Holbrook could suppress the publication of the Herald on condition that Holbrook pay Warmoth $5,000, in consideration of which Holbrook was to have all the property of the Herald Company. But when this was to be done Holbrook was required to assume the debts of the Herald Company which he refused to do, whereupon Warmoth said the same thing could be accomplished by assigning to Holbrook 65 shares of Herald Company stock, which was done, and the Picayune newspaper and printing escablishment was by the Herald Company assigned to Holbrook, and these acts formed parts of the transaction by which the New Orleans Picayune Printing Company was to be established out of the stockholders of the Herald Company, which was to be extinguished. That the charter of the said Picayune Company was signed by a part of the parties designated therein as stockholders and the number of shares allotted to each stockholder corresponded to the number which each claimed to hold in the Herald Company except 4 shares belonging to Warmoth in the Herald Company were placed as belonging to Hernandez in the Picayune Company.

She avers that the principal stockholders in the Picayune Company were A. M. Holbrook, 65 shares; Edward C. Hancock, 15 shares, and Alexander Walker, 10 shares. These were newspaper men, and it was intended that they should contribute their ability to the conduct of the newspaper. That Holbrook was to have control. She alleges that the main inducement to Holbrook for entering into said transaction with Warmouth, Hancock, & Walker, for the acquisition and publication of the

Picayune paper, was the suppression of the Herald newspaper, and to accomplish this, 65 shares, a majority of Herald Company stock, was assigned to him. But Hancock and Walker denied Holbrook's right to said stock, and so managed, or neglected to manage, said Herald Company as to have another newspaper, called the Bulletin, published from the machinery of the Herald Company. She charges that Hancock and Walker did not aid the paper as they should have done and because thereof the paper was not a success. She says that when the said bond was about falling due, Hernandez called on the Herald Company and Holbrook to pay it, which they both declared their inability to do. Whereupon Hernandez demanded that the establishment be sold and transferred to him, which was done. She further adds that Hernandez then offered the property to the Herald Company, which was unable to take it for the debt. The property was then sold by Hernandez to Holbrook for $32,500, $5,000 being paid in cash, and Holbrook became the owner. She alleges that the only parties who had any ownership in the said property were the Herald Company, which paid nothing therefor, and Hernandez, who paid for said property. She further says that Hernandez acted in the whole proceedings for Warmoth, who furnished Hernandez the money to pay said bond, and the amount Holbrook paid Hernandez, $32,500, for said paper was paid to Warmoth, who received the money and obligations given for the price thereof, and transferred the same before due to Chas. Howard, to whom Holbrook paid the full amount thereof. That Nicholson received one-fourth interest in said property at request of Holbrook. She also says that plaintiff paid nothing for his stock in the Picayune Company.

George Nicholson, answering, says he knows nothing

of the matters charged in the bill previous to 18th December, 1874, when commissioners were appointed to liquidate the affairs of The New Orleans Picayune Printing Company; says he has acquired an interest in the property of Mrs. Holbrook, and did own two shares of stock the in Picayune Printing Company on the 18th of December, 1874, and voted the same to dissolve the company.

After the case reached the federal court, plaintiff amended his bill by leave of court and asked for an accounting page 35 of record, to which amended and supplemental bill defendants demurred, but said demurrer was overruled.

Ritchie W. Holbrook and Richard Fitzgerald answered plaintiffs' bill and say that they voted for dissolution of the Picayune Company December 18, 1874. Eliza Jane Holbrook and George Nicholson, on page 40 of record, answer amendment to bill and deny the earnings of the said printing establishment, and deny that the debt to Howard has been paid. Plaintiff filed his replication, which is found on page 42 of record. The case was sent to an examiner where the evidence was taken and reported upon. The case was decided for defendants, and plaintiff's bill dismissed, and the case was brought to this court by appeal.

To reverse the judgment of the court below, the appellant relies upon the following points and authorities:

The court erred in this case in giving judgment for defendant, when judgment should have been given for plaintiff below and appellant here. The court erred against appellant in construing the law applicable to this case, and in applying and weighing the evidence in this case.

It is charged in the bill, that Holbrook transferred to

the Picayune Printing Company the printing establishment in controversy, clear of debt, in consideration for and in payment of 65 shares of the capital stock of that company, of the value of $250 each. That the said Holbrook was to pay the $20,000 bonded debt, falling due on December 19th, 1874. That such debt was in no event to be the debt of such company but the personal debt of Holbrook.

This allegation is substantially admitted by the answer of Mrs. Holbrook, for she says page 31-2 of record:

"Respondent further answering, says, that when the said twelve months' bond was about falling due, Joseph Hernandez, who was the surety thereon and who was a man of wealth, called on said *Herald Company*, not on said Picayune Company," and on the said A. M. Holbrook *to pay* the sum which they *both declared their inability to do*, whereupon, the said *Hernandez* paid the said bond and became the owner thereof, and demanded that Holbrook, as president, transfer the property to him, which was done.

The said answer, page 32, practically admits that the bill is true in that respect, for it avers that Hernandez acted *in the whole proceeding* at the instance and request of Warmoth, who furnished the money to Hernandez to pay said bond. On page 26 of record, Mrs. Holbrook says, that A. M. Holbrook was *unable* to pay said debt when it fell due. The whole tenor of Mrs. Holbrook's answer is to admit that the debt for which the establishment was transferred to Hernandez, was the personal debt of Holbrook, and not the debt of the Picayune Printing Company.

This fact is abundantly established, not only by the pleadings but by the testimony of Hancock on pages 52 and 59 of the record and the testimony of Walker on

pages 71 and 72, and that of Peter St. Amand, pages 86 87. And on page 89, defendant introduces in evidence as a part of the cross examination of Walker, a written contract of conveyance to Holbrook, by Walker, of the Picayune establishment dated Dec. 19, 1873, wherein Holbrook assumed the payment of the twelve months bond, and also a petition of Judge Walkers to Judge Saucier of the 6th district court of New Orleans, wherein the same fact, with others alleged in the bill in this case is declared in that petition page 91-93. Hernandez says, page 98 that he became surety on the twelve months bond at the instance of Warmoth.

Holbrook gave me security and guaranteed me against loss. I retained these securities till after the bond was paid. I retained them until the whole thing was settled, I paid the bond of $20,000 after they gave me the money, p. 99.

The contract to assume the $20,000 by Holbrook was in writing drawnby Semmes. Contents given by Judge Walker, page 108. The resolution authorizing sale recites that Holbrook was *unable* to pay twelve-month bond for $20,211, page 112. On page 118, Holbrook himself says, that he assumed the payment of the $20,000 bond in consideration that Warmoth hold the surety harmless—*which he did*. "The agreement was that I should put in as capital of a corporation, the Picayune Establishment; that I should have sixty-five shares of the stock of that company full paid; that the stockholders of the Herald Printing Co., should have the other fifty-five shares to be divided among them as full paid stock," page 121. The resolutions of the Herald Co., show that Holbrook assumed the payment of the twelve-month bond 122 and page 142. Warmoth says that Holbrook was to pay the twelve months bond. Amand says page 166, that Holbrook gave

his securities to secure payment of twelve months bond 169. Warmoth says that the twelve months bond was assumed by Holbrook, p. 170.

The *sole consideration* given by Holbrook for the stock in the Picayune Printing Company, was the assumption by him of the twelve-months' bond. (Warmoth, p. 173.)

The property when conveyed belonged to the Company, page 174. Holbrook agreed to pay the bond in consideration of the stock, p. 178 Warmoth. Holbrook assumed the bond, p. 177. He agreed to pay it in consideration of sixty-five shares of stock, p. 178. In the answer of Hernandez, in case of Walker *vs.* Warmoth, page 180 of record, introduced by defendant, it appears that Holbrook assumed the payment of said twelve month bond.

II.

The foregoing testimony not only shows that Holbrook *owed* the debt, to pay which he made colorable transfer of the Picayune printing establishment to Hernandez, and that the Picayune Printing Company did not own it; but other testimony, hereinafter quoted, shows that Hernandez was already secured by Holbrook and Warmoth against loss on account of being surety on said twelve-months' bonds, and that the pretended sale was absolutely unnecessary to save Hernandez. All of which was then known to all the parties to the said pretended sale; that the manipulation of resolutions of the board, and the stockholders' meeting, and the writing and transferring of papers, between Warmoth, Holbrook, and Hernandez, was a transparent subterfuge to cheat the other stockholders (among them appellant) out of their interest in the Picayune newspaper.

On page 169 Hernandez was asked: "In this transaction were there any securities given to you for the purpose of keeping you harmless, given by Holbrook?"

Ans. Yes, sir.

Do you know what they were?

Ans. Some mortgage notes, I remember. Judge Walker in his testimony, on page 108, says that at the time the written agreement, drawn up in the handwriting of Mr. Semmes was made, Holbrook put up securities satisfactory to Hernandez. Hernandez says, page 106, that Holbrook's agreement to hold him harmless on the bond was on a separate piece of paper from the bond. Hernandez, on page 98, says: I signed the bond at the instance, in the first place, of Warmoth. Afterwards Mr. Holbrook assumed payment of the bond, and gave me security and guaranteed me against loss on the bond. I retained these securities in my possession until after the payment of the bond. I held them as guaratees against all loss on that bond. On page 183 he says: I signed the bond in the first instance purely as an act of friendship for Warmoth. I looked entirely to him. Neither the Herald Co. or the stockholders gave me any assurance of protection. On page 181, as a part of Hernandez's answer, in the case of Walker *vs.* Warmoth, he says that just *before the maturity* of the bond Holbrook notified him that he, Holbrook, would not be able to pay the bond; that Hernandez thereupon called upon Warmoth to keep good his understanding to hold him harmless *and to furnish the means of paying said bond, which Warmoth expressed his willingness to do, and furnished Hernandez with the funds necessary for that purpose.* * * * And further on in said answer, (which is defendant's evidence) Hernandez says that *Warmoth furnished the money to take up the bond.*

Warmoth says, page 172, I furnished Hernandez the

money. It thus appears that the amount of the bond was put into the hands of Hernandez to pay the bond by Warmoth *before* the bond was due, and it also appears that Hernandez had in his possession mortgage notes of Holbrook's which he, Hernandez, thought sufficient to secure him against loss if he paid said bond. There then was no need of the transfer of the property to secure Hernandez, he already being doubly secured. The money was in his hands to pay the bond even before the bond fell due. The performance of this pretended sale was evidently *only* a performance to exclude appellant and others from the paper and to convert their property to the use of Holbrook, and to enable Warmoth to collect $5,000 of Holbrook, which he did. On page 184 Hernandez says he did not take possession of the property; did not even go to the office; did not appoint anyone to take charge of it; did not edit the paper. On page 185 he says, speaking of the transfer to Holbrook after the pretended sale: They told me to sign it, and I signed it right away. Holbrook, by means of the resolutions of the board, transferred the newspaper property to Hernandez to pay a bond which had already been paid, and the next day purchased back the property for $32,500. (See Warmoth's testimony, page 178.)

The answer of Mrs. Holbrook, page 27 of record, avers that Holbrook purchased the property back from Hernandez for $32,500, of which amount $5,000 cash was by him paid. In the contracts of conveyance, found on page 126–127 of record, it will be seen, however, that the real price of the paper is concealed. The fact that Holbrook paid $32,500 is shown by defendant's witness, Armand, on page 166 of record.

III.

Appellant alleges in his bill that the sale of the paper to Hernandez by Holbrook and by Hernandez back to Holbrook the next day was the result of a conspiracy among those who conducted the transaction to defraud him, appellant, of his rights in said property. These allegations are established by the testimony introduced by appellant. The defendant upon the same issue introduced as testimony for the defence the petition of Judge Walker, found on page 89-94 of record, wherein all the allegations of conspiracy and fraud are set forth and sworn to by said Walker. If the law will hold the defendants to the legal effect of their own proof, then have the defendants in this case shown by this document the purpose and object of the transfer of the property from the Picayune Co. by Holbrook to Hernandez and Hernandez to Holbrook, to be as is alleged by appellant in his bill.

This evidence introduced by defendant on cross-examination is binding on defendant, and its legal effect is to establish plaintiff's allegations of conspiracy and fraud; Story, Judge, in Alsop *vs.* Company, 1 Sum., 457. Each party asks all questions at his peril. Ib., Law of Depositions, Weeks, sec. 480. The petition of Judge Walker, introduced by defendant, can in no particular be contradicted by defendant.

"In considering the testimony in the cause greater weight and effect is given to fact admitted by the parties than to evidence *aliunde*, and greater regard is due to solemn admissions in judicio than to admissions by the parties *in pais*. Admissions in the pleadings and other solemn admissions *in judicio* are likened to an algebraic formula." (3 Green Ev., 13th Ed., sec. 373.)

It is obvious that a higher degree of credit is due to

the testimony of a witness who has been shown to the adverse party previous to his examination than to one sworn in open court. * * * * For in the former case the party had ample time to ascertain the character of the witness, while in the latter case this is impossible.

(3 Green Ev., sec. 377.) The petition here introduced by defendant is of the most solemn character. Defendant had thoroughly examined it before it was introduced. It was a matter of record and sworn to. We claim that defendants are absolutely bound by the allegations of fact against them therein contained.

IV.

Under the laws of Louisiana the Picayune Printing Company was dissolved by the defendants, their aiders and abetters, after it had been dismantled, and its property converted by the scheme complained of to the use of defendants. Said corporation so dissolved cannot be revived by the judgment of this court, and therefore is not made a party to this suit.

Section 687 of the Revised Statutes of Louisiana, page 136, provides as follows: It shall be lawful for the stockholders of any corporation at a general meeting called for that purpose to make any modification or addition, or change in their act of incorporation, or to dissolve it with the assent of three-fourths of the stock represented at such meeting. Any such modification, addition, change, or dissolution shall be recorded as required by the foregoing section:" "A majority of the stockholders of a corporation have power to dissolve it, but they cannot dispose of or exchange the interest of a stockholder in its assets without his assent." (MCurdy *vs.* Myers, 44 Pa. St., 535.) "Where the charter pro-

vided that the corporation might discontinue business when stockholders owning two-thirds of the capital stock voted to do so held that such a vote duly passed by stockholders owning two-thirds of the stock which was issued to stockholders was effectual."

(Green *vs.* Seymour, 3 Sandf., ch. 285.) "There is no pretence to say that a *scire facias* can be maintained, and a judgment had thereon against a dead corporation any more than against a dead man."

(Marnma *vs.* The Potomac Co., 8 Peters, 285.) "The obligations of such corporation survive and the creditors or stockholders may enforce their claims against any property belonging to the corporation which is held in trust for the company or the stockholders thereof at the time of its dissolution. As there was no corporation *in esse* in that case, no costs allowed." (*Id.*)

It is believed that in Terry *vs.* Anderson, 5 Otto, 636, the same principle is declared, to wit, that though the corporation which holds the property of the stockholders in trust for them be dissolved the trust property constitutes a trust fund which will be administered by a court of equity.

If a corporation *dissolve* and divide its property among its stockholders without first paying its debts, equity would convert the *persons* to whom its property had come, into trustees.

1 Perry on Trusts, sec. 242.

It is his right to follow the property of the Picayune Printing Company after said company became dissolved, that appellant is trying to assert in this proceeding. It is clear that equity will convert persons holding such property, who are not bona fide purchasers thereof, into trustees for the benefit of the stockholders, there being no creditors.

2 Story Equity Juris., sec. 1252.

V.

The officers of the Picayune Printing Company, during the life of that corporation, though not technically, were in every legitimate sense trustees for the stockholders. They, therefore, had no right to enter into or participate in a combination, the object of which was to divest the company of its property and obtain it for themselves.

(Jackson *vs.* Ludeling, 21 Wallace, 616.) "The directors are the trustees or managing partners and the stockholders are the *cestuis que* trust, and have a joint interest in all the property and effects of the corporation, and no injury that the stockholders may sustain by a fraudulent breach of trust can, upon the general principles of equity, be suffered to pass without a remedy." "The officers and directors of a corporate body are trustees of the stockholders, and in securing to themselves an advantage not common to all the stockholders, they commit a plain breach of duty."

Koehler *vs.* Iron Co., 2 Black's Rep., 715–721;
1 Perry on Trusts, sec. 207, note 5;
Drury *vs.* Cross, 7 Wallace, 299.

"Corporations of this kind are in truth little more than private partnership."

Bacon et al. *vs.* Robinson et al., 18 Howard, 485.

"In Mumma *vs.* Potomac Co., 8 Pet., 281, it was held that the assignment of all the property of the corporation and the surrender and cancellation of its charter, with the consent of the legislature, did not defeat the right of the judgment creditor to satisfaction of the property which had belonged to it. The power of courts of equity in cases like these was recognized as adequate to maintain the rights of the parties *beneficially in-*

terested, and this doctrine was repeated and developed in Curran *vs.* Arkansas, 15 How., 304." (18 How., *supra.*)

"No reason can be given why the dissolution of a corporation, whether by judicial sentence or otherwise, whose capital was contributed by shareholders, for a lawful and perhaps laudable enterprise with the consent of the legislature should suspend the operation of those principles or hinder the effective interference of the court of chancery for the preservation of *individual* rights of property in such a case. The withdrawal of the charter is such a substantial impediment to the prosecution of the rights of the *parties interested*, whether creditors or debtors, as would authorize equitable interposition in *their behalf* within the doctrine of chancery precedents." (18 How., *supra*, page 486.) To the same import is the case of Shamokin V. and P. R. R. Co. *vs.* Malone, 85 Pa. St., 36.

Trustees are incapable of purchasing the trust property themselves, or of deriving profit from it.

See *particularly* Gardner *vs.* Ogden, 22 N. Y., 343.

"The directors of a corporation are trustees of its stockholders, and in a certain sense, of its creditors, and any agreement to influence the action of such directors for the benefit of others and to the prejudice of the company is void."

Bliss *vs.* Matteson, 45 New York, 226.

"The rule that one holding a position of trust cannot use it to promote his individual interests, by buying, selling, or in any way disposing of the trust property, is now rigidly administered in every enlightened nation, and its usefulness and necessity become more and more apparent."

Butts *vs.* Wood, 37 New York Rep., 319.

The directors are trustees or managing partners, and the stockholders are the *cestuis que* trust, and have a joint interest in all the property and effects of the corporation; and no injury that the stockholders may sustain by a fraudulent breach of trust can, upon the general principles of equity, be suffered to pass without a remedy."

Angel and Ames on Corporations, sec. 312, page 367.

VI.

It may be argued that the complainant, himself, admits in his bill, page 7 of the Record, that the debt of $20,000, the twelve-months bond, was in one aspect of this case the debt of the Picayune Printing Company, for complainant alleges that nevertheless the said New Orleans Picayune Printing Company and the holders and owners of the remaining fifty-one shares of the stock thereof, owed, to the said Joseph Hernandez, or his legal assigns, the amount in *money* which the said Joseph Hernandez paid for the discharge of the twelve-months bond aforesaid. But this concession of the equitable liability of the corporation for the debt of Holbrook rests upon the hypothesis that Holbrook *forfeited* his right to the 65 shares of stock in the Picayune Printing Company delivered to him in consideration of the conveyance to the corporation by him of the property in dispute. Such forfeiture of his stock however has never been declared and Holbrook or his heirs are in no position to insist upon the equitable liability of the corporation for the debt, on any such ground. For he did not surrender his stock to the Company at the time he declared his inability to pay the debt; but, on the contrary he held on to and used that stock to turn the

property of the corporation over to Hernandez, to pay his, Holbrook's, individual debt; and, further used the stock and voted it, to dissolve the corporation; and Mrs. Holbrook, defendant herein, avers in her answer, page 28 of record that she now owns and holds said stock, the same having been acquired by her from the estate of her late husband. Besides the petition avers, that the corporation, or the fifty-one other remaining shareholders owed, on the hypothesis named, the money *paid* by Hernandez to *release* said property, but it will be kept in mind that the property was *discharged from the debt*, under the laws of Louisiana, by executing the twelve months bond; and, furthermore Hernandez was *furnished* the money by Warmoth *to pay* the said bond and therefore *paid nothing* on his own account on said debt, or to release said property. He therefore, in any view of the case, had no claim, legal or equitable, against the property, conveyed to him by Holbrook, and afterwards transferred by him to Holbrook for $32,500. In addition to Warmoth's guarantee to save Hernandez harmless on the bond, which Warmoth kept, Holbrook put into Hernandez' possession as security against loss, as surety on the bond mortgage notes, adequate as Hernandez says to protect him from loss as such surety. It was the duty of Hernandez to appropriate said mortgage securities to the payment of said debt *first*, if he had not been paid by Warmoth. But he was so paid by Warmoth before *said bond matured* and there was no necessity to appropriate said mortgage bonds put up by Holbrook, or to seize and convert the property of the Picayune Printing Compony to the use of himself. The whole transaction, composed of these apparent transfers was begun and consummated, to give possession of the property of the corporation to Holbrook and to extin-

guish, so far as could be done, the rights of complainant in it.

VII.

There may be an argument attempted, to the effect, that Hancock, complainant, did not keep and observe some obligation which it may be claimed, he was under to continue to participate in the active business of the Picayune Printing Company; and that his retirement from the paper as editor furnishes legal justification to Holbrook to use the property of the corporation to pay his, Holbrook's debt, and afterwards to dissolve the corporation. If the charter of the corporation be consulted (See page 11 of record,) it will be seen that complainant violated no provision of it, by withdrawing from his editorial position on the paper.

The said articles of association assigned him no duty on the paper, nor required any of him. The management of the paper, by Holbrook through the board of directors, was not interrupted or disturbed. Sure there can be found no law, which forfeits all the property rights, which one has in a corporation as a penalty for his retirement from a participation in the management of the business of the corporation. Nor can any legal justification for the conduct of Holbrook be found, growing out of the history of the Herald Company, after the organization of the Picayune Printing Company. Mr. Holbrook claims that he owned a majority of the stock of the Herald Company and that he acquired that stock for the purpose of protecting himself against the publication of a rival paper by that company. If what he says is true, nothing could be done by that company without his consent, for it is alleged in defendent's answer page 30 of record that Holbrook was offered the entire Herald Co., if he would

pay its debts, which he declined to do; whereupon he was assured that giving him possession of 65 shares, a majority of the stock of such company, would accomplish the same thing; which was done. So that according to defendents statement, no danger could come to him from the Herald Company. But the two companies had no connection, and the activity of the Herald Company, if it continued, was of no *legal* consequence to the Picayune Printing Company, and was no *legal* justification to Holbrook to convert the property of the Picayune Printing Company to his own use.

VIII.

There is considerable testimony in the record showing the value of the property of the Picayune Printing Company at the time Holbrook, under color of a purchase from Hernandez, converted it to his own use in 1874.

The establishment was bought from Hernandez by Holbrook for $32,500. Notes bearing six per cent. for $27,500 were given by Holbrook, $5,000 being paid in cash.

It is true that Warmoth says that he did not regard these notes worth to exceed twenty-five cents on the dollar.

Charles T. Howard, however, says he purchased these identical notes from Warmoth, and paid him dollar for dollar for them, and considered them worth what he paid for them. Page 128 record.

He says, I considered the notes a good investment. He says, also, in his answer, that he loaned Holbrook $4,500 to buy type. All the notes given by Holbrook for the paper were paid at maturity, page 129 and 183. Mr. Howard says that he considered the Picayune Newspaper Establishment worth $75,000 at that time and $100,000 at the time his testimony was taken in March, 1880,

page 129. In January, 1876, Holbrook having died, the establishment was inventoried at $45,000, $30,000 value of property and $15,000 accounts due. Page 138. Warmoth, page 178, says the paper was sold to Holbrook by Hernandez for $32,500.

On page 158 of record, Nicholson, a witness for defendant, and a co-defendant in this case, says that all the notes given for the paper were paid off out of the *earnings* of the paper. Witness Bigney says the establishment in 1874 was worth $50,000, page 100. Witness Whitney, page 103, fixes the value of the property in 1874 at $50,000. Judge Walker, on page 104, says it was in 1874 worth $75,000.

The testimony of Warmoth ought not to weigh down all this evidence of the value of the paper. Especially is this so in the light of Warmoth's dealings with the property itself. When the establishment was first purchased by the Herald Company, it brought, at sheriff's sale, $20,000. This price was realized in the face of an agreement between Warmoth and Holbrook that the latter should not bid against him, Warmoth, at the sheriff's sale. (See Mrs. Holbrook's answer, page 29.) Holbrook sold the same establishment a year or two previous for $100,000. (See page 28, answer of Mrs. Holbrook.) In the charter of the Picayune Printing Company, found on pages 11 and 12 of the record, notwithstanding the establishment, under said agreement with Warmoth, that Holbrook should not bid, was purchased for $20,000, the same property the next day was conveyed to the new company, by Holbrook, at a valuation of $30,000; and in said charter Holbrook acknowledges the receipt of that sum. Warmoth, though he knew of the price for which it was sold, says he would not give $5,000 for any paper in New Orleans, page 180; but he

bid in this very paper at sheriff's sale for $20,000, and was so eager to get it that he procured Holbrook not to bid against him. A year afterwards he sold this very paper for $32,500, and got the money in January, 1876. About fourteen months thereafter the same paper was estimated, in the estate of Holbrook, at $45,000. Col. Howard says, on page 130, that he had a *keeper in charge of the paper during the time covered by his notes, and that the paper paid him $10,000* per year on his indebtedness, while he so held it; and he further says that he believes the paper was paying at the date of his depositions March 1880, $15,000 per year.

The complainant is entitled to recover his share of the increase and earnings of the establishment after the same was converted to the use of Holbrook.

Barney vs. *Saunders*, *16 How. 535.*

1 Perry on Trusts, 468-471.

The amount of the earnings and increase of the property will be ascertained by reference to a master.

XI.

It may be claimed that there is a want of proper parties plaintiff. No question of that kind has been raised by defendant thus far in this suit, and it is too late if such objection was justified at an earlier stage of the case to now urge it. That a bill may be dismissed where the plaintiff when called upon to make proper parties refuses, or is guilty of unreasonable delay in doing so, need not be questioned; but to do so without a demurrer, plea, or answer, pointing out the person or persons who the defendants insist ought to be made parties, is unprecedented, and would most unquestionably be erroneous.

Greenleaf *vs.* Green, 1 Peters, 149.

Especially is the lack of parties plaintiff no impediment where the nature of the litigation requires a reference of the controversy to a master to take an account, for parties who are not named may intervene and make themselves actual parties so long as the proceedings are in *fieri* and are not definitely closed by the course and practice of the courts. Hotel Co. *vs.* Wade, 97 U. S.; Campbell *et al. vs.* R. R. Co., 1 Woods, 369.

All those holding stock in this company are parties. Judge Walker, who at the date of sale held stock in the company, delivered his to Col. Howard, who held it at the time of the institution of this suit, and who is made defendant in this case. See Record, page 188, affidavit of Howard. So that looked at it from any standpoint there is no defect of parties plaintiff or defendant in this proceeding, and the case is properly here for decision.

The grounds upon which the conduct of Holbrook if attempted to be justified are: First, that at the time os the pretended sale of the property of the Picayune Printing Company to Hernandez said company was insolvent. The answer to this is that no such claim is made in the answer of Mrs. Holbrook. On page 26 of the record she avers that the alleged sale was made to pay the twelve months' bond, which bond was not the debt of said corporation, but the private debt of Holbrook. About this fact there is no dispute in the record. No debt of the company is mentioned in the entire record as existing at the time of the alleged sale. On the contrary, on page 26 of the record *the specific reason for selling the property* of the company by defendants, was to pay the said *twelve months' bond.*

Holbrook the next day after the sale paid $32,500 for the same property. These facts, undisputed, show the absurdity of the pretence that the corporation was insolvent.

Secondly. It is claimed that Hancock, complainant, in some way contributed to the failure of the paper.

In answer to this suggestion it is sufficient to say that there is not in the record of the case the slightest evidence that the paper did fail, and therefore he could not have contributed to a state of things which did not exist.

Thirdly, A subdued lamentation is heard in the defence of the case concerning the alleged hindrance of and interference with Holbrook by Hancock in the management of the paper and its business. That hindrance and interference consists, as it is charged, in Hancock's withdrawal from the editorial management, in part, of the paper. But this claim is disposed of by Mr. Hancock in his deposition, page 54 of the record,he says: As soon as Mr. Holbrook came into the establishment he immediately usurped entire control of the paper, not only in business management, but in the managing editor's department." By-laws to this end were procured to be adopted by Holbrook. (Page 54.) Hancock stood ready at all times to perform his duties as editor. (P. 54.)

This testimony of Hancock is uncontradicted by any evidence in the record.

But were the fact otherwise, is there any principle of equity which permits a majority stockholder to sell out all the property of the corporation in which he holds a majority of stock, and with it pay his personal and individual debt as punishment of a minority stockholder who fails to agree with the majority holder in the management of the corporation. Under the operation of the by-laws adopted at the procurement of Holbrook not a debt could be contracted or a line written for the paper without the approval of Holbrook. If the paper did not prosper Holbrook was to blame for it. But it did prosper, and this fact explains why Holbrook desired to ex-

clude Hancock from it and convert the paper to his own use. It is even intimated that Hancock *resisted* the by-laws enacted by Holbrook. These by-laws gave *entire control* of the paper to Holbrook. Did Hancock *resist* them by permitting them to operate? He felt himself *excluded* from the editorial control of the paper by their adoption. He *protested against* their adoption; that is all. Certainly it will not be argued that Holbrook *wanted* Hancock to *continue* to manage the editorial department of the paper and expected him to do so after it is shown that Holbrook passed these very by-laws to *exclude him* from that management. How utterly unjust, then, is the suggestion that Hancock *impeded* the paper by allowing Holbrook to manage it entirely in his own way.

It is said in what was published in the Picayune news paper as the opinion of the court in this case (which opinion is printed in full in the appendix to this brief) that Holbrook had undertaken to pay the twelve months' bond, and he failed to perform his undertaking.

True he did fail in carrying out that undertaking, and the *property of the corporation was applied to pay a debt which, as between it and Holbrook*, belonged to him to pay. But the court proceeds to say, his inability to pay, and the inability of the corporation to successfully conduct its business, resulted from a refusal of complainant to acquiesce in the *charter*, and from discordant *views* and *action* in which complainant largely participated. This is untenable ground to rest the judgment of this case upon. The *charter* gave control of the business of the corporation to the *majority stock*. This Holbrook held and used during the life of the corporation, without obstruction from any one. Complainant *had no power*, under the *charter*, to embarrass Holbrook, and there is no proof that he tried to. The discordant *views* which he held were lim-

ited to his failure to approve the usurpation of Holbrook of the entire management of the paper to the exclusion of complainant. But even this he so far acquiesced in as to fail to molest him in doing. So far as his alleged discordant *action* is concerned, he has only tried to prevent Holbrook from appropriating his property.

The case, as conceded, stands thus: Holbrook owed the twelve-months' bond. He had, in consideration of sixty-five shares of full paid stock in the Picayune Printing Company, agreed with that company to pay that bond. He did not pay it. He held on to his stock, and his heirs still claim it. He delivered all the property of that company to his private creditors, against the protest of complainant, to pay his private debts. He took it back the next day for $32,500, and with that amount paid also a *private* debt to Warmoth. Fourteen months afterwards the same property, after paying $10,000 per year debts, was valued at $45,000. A court of equity is asked to say that this transaction is in good conscience and just.

The court below was in error in saying that Holbrook was unable to pay the bond because of any action of Hancock, the proof is that Hernandez, at the time of the pretended sale of the property to him by Holbrook, held and then had in his possession sufficient collaterals to pay the twelve-months' bond. These collaterals were put into his hand to secure him against loss when he became surety yon the bond, and before Hancock had withdrawn from the paper. These collaterals Hernandez deemed sufficient to pay the bond, and he should in law have first applied them to the extinguishment of said bond. Besides all this, Warmoth had likewise secured Hernandez from loss on account of said bond, and had, agreeable to his promise, actually paid Hernandez the money to discharge said bond before the pretended sale of the Picayune property for that purpose. It was in

Warmoth's interest that Hernandez signed the bond as surety, and not in the interest of the Herald Company or Holbrook, so says Mrs. Holbrook in her answer, page 28. She further says that Warmoth conveyed to Holbrook 65 shares of stock in the Herald Company and that Holbrook gave his note to Warmoth therefor for $5,000. This note was paid in cash at the time of the alleged sale of the Picayune newspaper to Holbrook by Hernandez, page 52. Hernandez was abundantly secured against loss without the sale of the paper, and in no aspect of the case was that necessary in order to secure Hernandez. Holbrook desired to become the exclusive owner of the Picayune newspaper which he had only two years prior thereto sold for $100,000, and he simply made the contingent liability of Hernandez on the twelve-months' bond a pretext of sale of the property first by himself to Hernandez and secondly by Hernandez back to himself.

The pretences set up as a defence that he Holbrook could not pay the bond, that Hancock injured the paper, by allowing Holbrook to crowd him Hancock, out of it, and become the absolute manager of it himself; and the further pretence that the *Herald Company* was allowed to do some indescribable injury, when Holbrook held, as he says, a *majority of the stock of that* company, which made it impossible for that company to act without Holbrook's *assent*, are too shallow to commend themselves with much force to a court of Equity. The only law which supports Holbrook's title to this property, is "the good old rule, the simple plan, that they should take who have the power, and they should keep who can."

EPPA HUNTON,
JEFF. CHANDLER,
Att'ys for Appellant.

It is submitted that in this case Hernandez had no equitable claim against the property sold to the Picayune Printing Company, by Holbrook and originally purchased at judicial sale by the Herald company defendent. Mrs. Holbrook says in her answer, page 28 of record. Hernandez was and is a man of wealth in good credit, and was compelled to protect his name, and would not have signed as security for the *Herald company, nor for the plaintiff*, nor for Alexander Walker, but was induced to do so, and to become said security at the instance and special request of H. C. Warmoth, who verbally agreed and stipulated that he, the said Warmoth would hold the said Hernandez for said bond, and that he should be secured against the same." It will be seen by this that Hernandez under his contract with the parties had in law, and in equity no lien upon the property sold by Holbrook to the Picayune Printing Company, and in no event contemplated that the said property should become chargable with the payment of the debt for which he had become surety, equity will not *create* a lien when the law gives none. 2 Story, Equity Juris. sec. 1216. There are some exceptions to this broad statement but neither law nor equity will follow with a lien, personal property passing from hand to hand. When the possession of personal property is parted with by the vendor he has no lien for the price thereof and as a consequence the security of the first vendor has no lien against the property in the hands of the second vendor. All parties deal, whether as principals or securities, in personal property, disposed of in good faith, where the power to sell is clear, with the district knowledge that no lien for the selling price exists in favor of the vendor after possession voluntarily given by him. The Picayune Printing Company bought the property in controvercy, in good faith of Holbrook, with the knowledge and con-

sent of Hernandez, and paid full price therefor which price Holbrook forever thereafter retained. Holbrook had no lien upon the property. He was paid in full therefor when he sold the same, Hernandez was not surety for Holbrook, but had signed a bond given by the Herald company, Holbrook's vendor. Hernandez had no lien because of signing said bond, any more than he would have had, had he signed a promissory note given for the price of the property by the Herald Company. Equity follows the law and will not *construct* a lien against personal property where the law gives none. There being, in this case, no pledge or mortgage of the property, to secure the twelve months bond, to which, the surety, if he paid the bond, could succeed; no lien upon the property created by contract between the parties. Equity will not *construct* a lien for them. The property appropriated by Holbrook was legally vested in the Picayune Printing Company, free from any claim legal or equitable of Holbrook or Hernandez or the Herald company. This view of the case is conformed by the answer of Mrs. Holbrook as above quoted. Mr. Hernandez, instead of relying upon a pledge or mortgage of the property to indemnity him as surety, made a specific contract of indemnity with Warmoth and Holbrook. On page 106, Hernandez says that Holbrook on a *separate piece of paper*, from the bond, made a contract of indemnity of Hernandez. It therefore appears that Hernandez had two contracts of indemnity against loss as surety on the twelve months bond. One with Warmoth, and one with Holbrook. On page 181, Hernandez says he signed the bond in the first instance, purely as an act of friendship to Warmoth. I looked entirely to him, neither the Herald company or the stockholders gave me any assurance of protection. He says also that he held the securities that Holbrook gave him until the bond was

paid. Under such a state of facts upon what principle of equity, could Hernandez follow the property of the Picayune Printing Company. Even if a mortgage on the property had been given to secure the twelve months on which Hernandez was surety (which was not the case) and Hernandez had made a specific contract of indemnity, (as he did in this case with both Holbrook and Warmoth) he could not have had the benefit of the mortgage. In Brant on suretyship sec. 267, it is said "If a surety pay off the mortgage, he is entitled to the benefit of all the securities, but here the plaintiff has contracted with the mortgagor for whom he is surety that he should receive a *particular specics of indemnity if he pay* off any part of the principal or interest of the mortgage. That indemnity he is entitled to and *not to the benefit of the mortgage* paid off" see also Cooper *v.* Jenkins 32 Beavan 337.

Not only was there no pledge or mortgage of the property to secure the twelve months bond on which Hernandez was surety to which he could succeed if he paid the bond, but that he had two specific contracts of indemnity from loss on said bond. The proof shows that these specific contracts were adequate to the full payment of said bond and further that one of the parties who so indemnified Hernandez against loss *actually, before the bond fell due, furnished Hernandez to money to pay the said bond and that with that money Hernandez did pay the bond.* See pages 172, 181, 183, record page 14 of brief.

APPENDIX.

Article 436, Rev. Code 427, Old Code.

The estate and rights of a corporation belong so completely to the body, that none of the individuals who compose it can dispose of any part of them.

In this respect the thing belonging to a body is very different from a thing which is common to several individuals as respects the share which every one has in the partnership which subsists between them.

Article 439 of civil code provides that "assets of a corporation can only be used and disposed of by the lawful officers and administrators thereof by contracts, or acts not in excess of the administration entrusted to them."

Section 3,676 of the Revised Statutes of La., Ray's Digest, vol. 2, page 588, under the head of Subrogation.

Whenever a person bound as security upon a twelve months' bond has paid the same he shall be subrogated to all the rights which the original creditor was given at the time the bond is paid by such security, provided, however, that this shall only apply when the property has been adjudicated to the defendant in the judgment and he is the principal upon said twelve months' bond.

Wm. H. Chandler
Atty for Appellant

112-229

FILED
OCT 17 1894
JAMES R. MCKENNEY

IN THE

Supreme Court OF THE United States.

No. 377.

EDWARD C. HANCOCK, *Appellant,*

vs.

ELIZA JANE HOLBROOK, now ELIZA JANE NICHOLSON, and CHS. T. HOWARD, and others *App'lees.*

SUPPLEMENTAL BRIEF OF COUNSEL FOR APPELLANT, IN REPLY TO BRIEF OF COUNSEL FOR APPELLEES.

EPPA HUNTON,
JEFF CHANDLER,

IN THE

Supreme Court OF THE United States.

No. 377.

EDWARD C. HANCOCK, *Appellant,*

vs.

ELIZA JANE HOLBROOK, now ELIZA JANE NICHOLSON, and CHS. T. HOWARD, and others *App'lees.*

SUPPLEMENTAL BRIEF OF COUNSEL FOR APPELLANT, IN REPLY TO BRIEF OF COUNSEL FOR APPELLEES.

The counsel for appellees rests his case mainly on two propositions:

FIRST.

Where a necessary case of resolution exists the purchaser may do voluntarily what he can be compelled to do by suit.

Therefore it was competent for Holbrook as an individual who purchased the paper from the Herald company to agree to a resolution of the sale and for the Herald company through its representative (the Picayune) to sell to Hernandez in payment of its debt the property retroceded to it by Holbrook.

ANSWER TO FIRST POINT.

The Picayune and Herald were in no sense the same nor was the former in any sense the successor or representative of the latter.

The Herald company sold the Picayune to Holbrook, leaving the Herald company still in possession of the Herald newspaper.

Holbrook after his purchase of the Picayune held a controlling interest in the Herald company which remained an entity and afterward published the Bulletin, and Hernandez offered to sell the Picayune back to Herald company.

The fact that Holbrook sold the Picayune to himself and certain stockholders of the Herald company does not in any sense make the purchasers (who were incorporated as the Picayune company) the same company as the Herald or successors to it.

If all the new company had been stockholders in the Herald it would have been still a new and distinct company from the Herald--one owning the Herald News paper and the other the Picayune. But when Holbrook came in as a new man (not identified with the Herald company) as owner of a majority of the stock, it must be considered a new and distinct company, without any legal connection with the Herald comany.

If this be so, the first point is answered, because counsel makes it depend on the fact that the Picayune is the representative of the Herald.

But if these companies were one and the same, then Holbrook was trustee, and as such trustee agreed with himself as an individual to release himself from the purchase price of property which he had bought and sold.

A person cannot act for himself with respect to the

same matter as the agent of another whose interests are conflicting. 103, U. S. 658.

If the Picayune was the successor of the Herald the position of appellees' counsel would still be untenable. The right to dissolve a sale for non-payment of price cannot be transferred. The resolutory condition can only be enforced by the vendor.

Swan *v.* Gayle, 24 La. Ann. 498.

The parties must be the same.

Augusta Ins. Co. *v.* Packwood, 9 La. Ann 75.

The resolutory condition, therefore, could only be enforced by the Herald company the vendor; and no one but the Herald company could agree to resolute this contract. This right of the Herald company could not be transferred, even to its successor, if it had one.

No one but the original parties, who may be parties to a suit to resolute this contract, could voluntarily agree to resolute it.

The property sold to Holbrook was movable property, and when he sold it to the New Picayune Company the right of the Herald company to enforce the resolutory condition was lost and therefore could not be voluntarily accomplished.

Lalance *v.* Wolf, 28 La. Ann., 942.
Wilmot & Co., *v.* Onachita Belle, 32 A., 611.

A sale cannot be annulled for non-payment of price when the parties cannot be put in same condition as before the sale.

Bermudez *v.* Union Bank, 7 La Ann., 65.

SECOND POINT OF APPELLEE'S COUNSEL, (p. 26.).

"When Hernandez paid the bond he fulfilled the obligation or promise of Holbrook to do so, and he also fulfilled the obligation of the Herald company to pay the bond. He therefore became subrogated to all the rights of the holder of the bond and of the Herald company against Holbrook and to the privilege of the Herald company against the property as vendor."

ANSWER.

This point depends entirely on the doctrine of subrogation and the vendor's privilege; neither of which is applicable to this case.

If the surety take separate indemnity, he thereby waives his right of subrogation.

Brandt on Suretyship and Guaranty, §267.
Cooper *v.* Jenkins, 32 Beavan, 337.
Cornwell's Appeal, 7 Watts and Serg't, 305.

When Hernandez took from Warmoth his promise of indemnity, and when he took from Holbrook satisfactory collaterals he twice waived his right (if he ever had any) to subrogation. But he never had any right of subrogation. He was the surety on a twelve-months' bond, taken in payment of property sold under execution. This bond is the creature of statute, and the rights of surety upon it have been settled by decisions in Louisiana.

It has been decided that the surety on payment is subrogated to the creditor's right in the bond itself and to nothing more.

That is he takes all the right the creditor had to *collect the bond*—without any right to resolute the sale even if the property had continued in the hands of the vendee—the Herald company.

Trent *v.* Calderwood, 2 La. Ann. 942.
Tardy *v.* Allen, 3 La. Ann. 66.
Old *v.* Chambliss, 3 La. Ann. 206.
Crow *v.* Walsh, 3 La. Ann. 541.

The only exception to this rule is when the judgment debtor is principal on the bond, in which case the surety is subrogated to the rights of the judgment creditor

Wilkins *v.* Babo, 13 La. Ann. 430.

In the former case he may enforce the bond against the principal; in the latter the judgment also—in neither case does it give him any title to the property; for that the bond was substituted.

Now as to privilege of the Herald company as vendor of this property to Holbrook, which the learned counsel maintains, followed the property into the hands of Picayune company, and to which Hernandez was subrogated when he paid the bond.

To this it is answered in addition to what has been said against Hernandez's right of subrogation that the vendor's privilege upon movables continues, only while they are in the vendee's possession.

Flint and Jones *v.* Rawlings, 20 La. Arm. 557.
Peun *v.* Ott, 12 La. Arm. 233.

Ray's code Art 3217 and 3227—and must have been recorded to affect third persons, 20 La. Ann. 714.

The new Picayune company became the owner of this property without assuming any liability for the 12 month's bond, and the property was held by that company, clear of all claims of Hernandez or the Herald company.

The quasi admission of an equitable liability in petition page 7, paragraph 23, cannot affect the question for

the reasons stated in former briefs, and because in the same petition, page 3, paragraph 8, it is averred that "the Picayune company became and was in no way liable for or on account of said 12 month's bond, * * that said bond in no sense ever became the debt of Picayune company, but remained the debt of the Herald company and by assumption the personal debt of Holbrook."

EPPA HUNTON,
JEFF CHANDLER,
Counsel for Appellant.

112-229

SUPREME COURT OF THE UNITED STATES.

No. 377.

OCTOBER TERM, 1883.

EDWARD C. HANCOCK, APPELLANT.

versus

MRS. ELIZA JANE HOLBROOK,
GEORGE NICHOLSON, AND CHARLES T. HOWARD
APPELLEES.

THOS. J. SEMMES,
For Appellees.

SUPREME COURT OF THE UNITED STATES.

No. 377.

OCTOBER TERM, 1883.

EDWARD C. HANCOCK, APPELLANT.

versus

MRS. ELIZA JANE HOLBROOK,
GEORGE NICHOLSON, AND CHARLES T. HOWARD,
APPELLEES.

On the 31st Jan'y, 1872, two hundred and forty citizens of New Orleans, representatives of a political party then existing, having organized themselves into a corporation under the State laws, styled "The New Orleans Printing and Publishing Company," purchased from Alva M. Holbrook, the husband of the defendant Eliza Jane Holbrook, "The New Orleans Picayune Newspaper" together with its presses, machinery, good-will, etc., and everything appertaining thereto. The price paid was $100,000, part in cash, part in notes, and part in stock of the Company: p. 192.

This paper was published in the interest of the party represented by the above mentioned citizens, who, under the name of reformers, endeavored to control the politics of the City; the paper was badly conducted, their scheme failed, the paper ran

down and became unpopular, the declining fortunes of the party and the consequent loss of patronage to the paper, brought on embarrassment until in the fall of 1873, insolvency ensued, and the establishment was seized at the suit of creditors and offered for sale by the Sheriff in the midst of the memorable panic of that year.

On the 19th of December, 1873, the Sheriff sold the property on twelve months' credit for $20,000.

The laws of Louisiana regulating execution sales, require that the property seized be appraised and if at the first offering no bidder will bid two-thirds of the appraised value, then after a second advertisement of ten or fifteen days, it is sold on twelve months' credit for whatever price it will bring; the purchaser is required to give surety for the payment of the price; such a sale is familiarly termed a sale on twelve months' bond, because a bond with sureties is given for the price payable in twelve months.

The purchaser at this sale was a corporation styled "the Herald Printing Company," another newspaper, in its infancy; for its existence, commenced 12th May, 1873, p. 50, and at that time struggling for existence as an evening paper, p. 56, and dependent for its daily support on the contributions of friends of whom Ex-Governor Warmoth was the principal; in fact the paper was insolvent as numerous judgments and executions against it establish, notwithstanding the denial of Hancock and his associate, Walker.

The surety on the bond given to the sheriff by the Herald Company was Mr. Hernandez, a gentleman of wealth, who had no interest in the transaction, and who became surety at

the request of Warmoth, and on as express agreement, that he should be held harmless and guaranteed against all loss, in consequence of his suretyship.

The Herald Company, at the time of this purchase, was under the absolute control of Walker, who was President, Hancock, the complainant, who was surety, and Warmoth, who was aiding the company with money and who was a stockholder; his stock stood in the name of Hernandez; the other stockholders were mere friends, who had subscribed for small lots of stock, to aid the enterprise at its inception."

The Herald Company had no means or credit, and therefore could not have purchased the Picayune newspaper, but for the aid of Warmoth who had both money and friends. It was Warmoth who procured the surety on the twelve months' bond, given by the Herald Company. This is admitted on all sides, it is also admitted that Hernandez had no interest in the matter, that as an act of friendship to Warmoth, and at his request and the request of Walker, President of the Herald Company, he consented to become surety on the bond, and both Walker as President of the Herald Company and Warmoth, undertook and agreed to hold Hernandez harmless.

But Warmoth who knew the insolvent condition of the Herald Company, and who had no confidence in the business capacity of Walker or Hancock, stipulated as a condition on which he would furnish the surety on the twelve months' bond, that the Herald Company should transfer or sell the Picayune newspaper to A. M. Holbrook, a man

well known for his business capacity in the management of newspapers, and as a consideration for the sale, Holbrook was to assume the payment of the twelve months' bond at maturity, and thus relieve Hernandez as surety, and Warmoth of his obligation of guarantee to Hernandez; and as part and parcel of the same transaction, that a company or corporation to be styled the New Orleans Picayune Printing Company should be formed, to which Holbrook was to transfer the Picayune newspaper, and the Herald Company was to be suppressed, and all the stockholders of the Herald Company were to have in the new company, shares of stock pro portionate to their respective interests in the suppressed company, except that Holbrook who agreed to pay the bond at maturity, was to have the controlling interest in the new company. The number of nominal shares of stock in the Herald Company was 120 of $250 each.

Pursuant to this arrangement, the purchase of the Picayune newspaper was made by the Herald Company, the bond was given, Hernandez became surety, the Herald Company sold the paper to Holbrook, the New Picayune Company was organized, its stock consisted of 120 shares, of which sixty-five were allotted to Holbrook, sixty-three being in his name, one in the name of his brother, R. W. Holbrook, and one in the name of Peter St. Amand, his employee; fifteen shares were allotted to Hancock, ten to Walker, four to McComb who refused to receive them, and eight to Hernandez who represented Warmoth, the residue of the shares were distributed in lots of one or two shares, to various persons, who had been stockholders in the Herald Com-

pany, and to whom a corresponding interest was given in the new Company.

The charter of the Picayune Company is found at pp. 11, 12 and 13 and it will be perceived that though the allottment above mentioned is contained in the body of the charter, the signatures to it are only those of

A. M. Holbrook,	Sixty-three	shares.
Alex. Walker,	Ten	do.
J. Hernandez	Eight	do.
R. W. Holbrook,	One	do.
E. C. Hancock,	Fifteen	do.
Peter St. Amand,	One	do.

The signers were really the only parties to the transaction; that is to say A. M. Holbrook, for R. W. Holbrook and St. Amand were his representatives; Hancock, Walker and Warmoth, for Hernandez represented Warmoth; it was deemed prudent to conceal Warmoth's connection with either the Herald or the Picayune, and therefore his stock was put in the name of Hernandez.

This charter was executed 19th December, 1873, two or three days after the Herald Company purchased the Picayune newspaper at Sheriff's sale.

Article 10 of the charter of the Picayune Company is as follows:

"The Picayune newspaper establishment recently purchased at Sheriff's sale by the Herald Printing Company, and as it has been by said Company transferred and sold to A. M. Holbrook, is by said A. M. Holbrook now sold, delivered and transferred to this corporation at the price and sum of $30,000 cash, which said Holbrook acknowledges to have received, and the said establishment as acquired at

said Sheriff's sale is the property of this corporation, and the shares of stock in this corporation are fixed at one hundred and twenty of $250 each, making an aggregate of $30,000, and all said shares are full paid, and are distributed among the subscribers in the following proportion, etc.," p. 12.

It is admitted on all hands, and the bill proceeds on the admission, that in point of fact no cash was paid to Holbrook, but that he transferred the Picayune newspaper to the Picayune Company, with the understanding and agreement that he was to take the place of the Herald Company, that is to say, of the Picayune Company constructed from the stockholders of the Herald Company, and pay the twelve months' bond at maturity.

The bill admits "that in equity and good conscience and notwithstanding the fraudulent and illegal combinations and transactions of said A. M. Holbrook with Joseph Hernandez and George Nicholson and Peter St. Amand and R. W. Holbrook, nevertheless the said New Orleans Picayune Printing Company and the holders and owners of the remaining fifty-one shares of the stock thereof, owed to the said Joseph Hernandez or his legal assigns, the amount of money which the said Joseph Hernandez paid for the discharge of the twelve months' bond aforesaid, upon which said Hernandez was surety as aforesaid, but which *was primarily the debt in equity and good conscience of the New Orleans Printing Company as the successor of the Herald Company, which coporation was legally the principal on said bond*," p. 7.

This admission is forced from the complainant, under the necessity of coming into court with clean

hands; otherwise he and his co-stockholders of the Herald Company, would have occupied the attitude of a debtor who, by the machinery of dissolving one corporation and reconstructing another, was seeking to defraud his creditors by a transfer of the property of the dissolved corporation, to the reconstructed corporation with full knowledge that the price of the property thus transferred had not been paid, and that the assets of the dissolved corporation, were totally inadequate to meet its liabilities.

Therefore the complainant in this part of his bill frankly admits, that the Picayune Company and Herald Company, as its successor, are one at least as to this twelve months' bond, and that so far as the liability on that bond is concerned, the Picayune Company as well as the Herald Company, was as to Hernandez, the principal on said bond. If this be so, then it is the Herald Company as well as the Picayune Company, both being one, which sold the Picayne newspaper to A. M. Holbrook, the price being his promise to pay the amount of the twelve months' bond to the holder of that bond at maturity, and his agreement to put the property thus to be paid for by him into the Picayune Company as its capital stock.

This collateral agreement of Holbrook to pay the twelve months' bond, did not relieve the Herald Company from its liability to Hernandez, nor to the holder of the bond; if the Herald Company was not released, then its successor, the Picayune Company, also remained bound.

It seems that before the arrangement was made, it was contemplated that Holbrook should be the business manager of the new corporation, and that Han-

cock and Walker should have charge of the editorial departments. Whatever may have been contemplated or expected, this distribution of authority never assumed the form of an agreement, nor does the bill set forth or rely on any such stipulation.

The charter provides that the Corporation shall be governed by a board of Directors, consisting of five persons who must be stockholders owning at least one share. P. 11.

This Board was vested with absolute authority to manage the affairs of the Company, inasmuch as the Sixth article of the Charter declares that it "may adopt such by-laws as may be necessary to manage the Company." P. 12.

Such power given to the Board is inconsistent with any previous verbal conversations as to the plan of management.

By the terms of the charter, Holbrook retained absolute control of the management of the paper, and it was intended that he should retain it as owner of sixty-five shares of stock, two of which were given to his friends, one to his brother, R. W. Holbrook and one to St. Amand, for the express purpose of qualifying them to be members of the Board of Directors; there was no concealment about this, because the charter signed by Hancock recognizes A. M. Holbrook, R. W. Holbrook and St. Amand as members of the first Board of Directors, Walker and Hancock being the other two. P. 12.

The averment of the bill, that from the first organization of the Board complainant discovered the fraudulent purposes of Holbrook, meet with little credit when the very charter which brought the

company into existence, specifies that organization, and gives the names of its members.

If the fraud was then discovered why sign the charter?

The complainant, Hancock, in his testimony says, that the understanding as to the management of the paper was, that Holbrook was to be the business manager, Walker to be the chief of the editorial staff, and he was to be the managing editor, p. 52.

Then on p. 54, he says: "as soon as Mr. Holbrook came into the establishment he immediately usurped entire control of the paper, not only in business management but in the managing editor's department. The first Board of Directors was composed of Holbrook, St. Amand, R. W. Holbrook, Walker and myself. They were employees of his, and having a control in the Board of Directors, he immediately proceeded to violate the agreement under which Walker and myself were to continue on the paper as I have stated, and assumed to be practically the sole owner and manager of the Picayune. This usurpation culminated by the presentation to the Board of Directors for their adoption at *their first meeting* a series of by-laws, framed in flagrant violation of the agreement to which I have adverted. I protested against the adoption of their by-laws, and requested that my protest be noted in the minutes of the Board; but they were adopted against my protest and from that time I could not attend any meetings of the Board of Directors, or assume any connection with the Picayune, without condoning, a fraud and jeopardizing my own interest and those of other stockholders of the paper."

What fraud was he apprehensive of condoning ?

Does he allude to the alleged agreement as to the management of the paper ? If so, it is strange a matter so important should have found no place in the bill of complaint. The bill is silent on the subject. The Charter which contains all the stipulations on which the parties finally agreed, makes no mention of such an agreement, while the absolute power vested by the Charter in the Board of Directors, is entirely inconsistent with any such agreement, and Hancock expressly admits that a majority of stock was given to Holbrook, for the specific purpose of enabling him to control the paper ; (answer to 18 cross-interrogatory, p. 59.) ; and he also admits, that the placing by Holbrook of one share of stock in the name of St. Amand, and one share in the name of R. W. Holbrook, was done with his approbation, and for the purpose of giving Holbrook control of the paper : (19 cross-interrogatory, p. 59.)

Hancock having refused to attend the meetings of the Board, a by-law was adopted 27th January, 1874, declaring that " any member who shall be absent without leave for three consecutive meetings of the Board, after having been notified to attend, shall cease to be a Director, and his place shall be filled by the other Directors from among the stockholders."

This by-law was unanimously adopted, Walker being present at the meeting. P. 111.

Hancock was not present, nor did he ever afterwards concern himself about the Picayune. He says that he abstained from attending the meetings intentionally and under legal advice, and this was

soon after the formation of the Picayune Company, for he only attended two meetings of the Board-p. 62.

At this same meeting, a motion made by Walker was adopted, authorizing the President to consult counsel as to the *proper measures to be taken to defend the suit now pending* in the Sixth District Court relative to the sale of the Picayune, and the suit brought by the Picayune Printing and Publishing Company to annul the sale of said property, p. 111.

The original Picayune Company of 1872, the defendant in execution, it seems had brought suit to annul the sheriff's sale.

It is thus perceived, the title to the paper was in litigation and Hancock had retired to his tent, and withdrawn from the paper his countenance and support. Every one knows the utter prostration of business, North and South, which followed the panic of September, 1873. The country staggered under it for several years, and the year 1874, was the worst of all these years. The result was, the paper made no money, and when the time approached for the payment of the twelve months' bond, Holbrook announced his inability to raise the money for that purpose.

Thereupon, on 14th December, 1874, a meeting of the Board of Directors was called, at which the following resolution was passed:

"Whereas, the twelve months bond for the original purchase price of the Picayune establishment, given to the Sheriff in the suit of John Phelps vs. New Orleans Printing and Publishing Co., 4979, Sixth District Court, amounting to $20,211.38, is about to become due and payable, and

"Whereas, A. M. Holbrook is unable to pay the same; and whereas, this Company has not the means to satisfy said bond, and it is just and equitable that this Company should not retain the property for which the said bond was given, to the detriment of the surety on said bond, therefore,

"Be it resolved, that in case Joseph Hernandez, the surety on said bond, shall pay the same, the President of this Company be, and he is hereby authorized to sell and transfer the Picayune establishment, and all its property and good will, to the said Joseph Hernandez, in satisfaction of his claim as surety on said bond."

Walker, who was present, protested against the passage of the resolution, on the ground:

"That the Picayune Printing Company have no liability on the twelve months bond; that it has not the power to make title to the property in question, and that the resolution is illegal and invalid, and he hereby enters his protest against the same, in behalf of the fifty-five shares in said Company, which he represents." p. 111, 112. At that time he owned no stock, as I will hereafter show.

On the 15th December, 1874, the Picayune Company, pursuant to the resolution of the Board of Directors passed on the preceding day, sold and conveyed the paper, its good will and appurtenances, to J. Hernandez, in consideration of $20,211.98, "which had "been paid by the said Joseph Hernandez, as surety " upon a twelve months bond, given for the purchase " price of the Picayune establishment, on the 16th day " of December, 1873, in the cause of John Phelps vs.

" The New Orleans Printing and Publishing Company,
" No. 4979, on the docket of the Sixth District Court
" for the Parish of Orleans, the payment of which
" amount by the said Hernandez is hereby acknowl-
" edged, and the said A. M. Holbrook, individually,
" in consideration of the premises, conveys, assigns and
" sets over to the said Joseph Hernandez, all right and
" claim, whether in law or equity, the said Holbrook
" may have to said property, but the said Holbrook,
" in making the said sale as an individual, hereby gives a
" quit claim, and in his individual capacity makes no
" guarantee whatever, and hereby expressly excludes
" all the guarantees implied by law." p. 123–4.

On 22d December, 1874, a meeting of the stockholders of the Picayune Company was held, pursuant to a call or notice given on the 19th of that month, convoking the meeting, for the purpose of dissolving the corporation and liquidating its affairs. p. 112, 113.

Ninety-one shares of stock were represented at this meeting. These shares were held by the following persons:

A. M. Holbrook	63
R. W. Holbrook	11
R. Weightman	8
P. St. Amand	4
Geo. Nicholson	3
J. A. Quintero	1
R. Fitzgerald	1
	91

This meeting voted a dissolution of the corporation and ratified the sale to Hernandez. p. 113.

There was no dissentient voice; all the stock issued

by the Company, except eighteen shares, was represented at the meeting; so that if the sixty-five shares originally allotted to Holbrook be thrown out, the remaining twenty-six were sufficient in number to ratify the sale and put the corporation into liquidation; for Article 9 of the Charter provides that, "the liquidation of the "affairs of this corporation shall be by a commissioner "to be appointed by a vote of the majority in amount "of the stockholders, either at a regular or special "meeting." p. 12.

The eighteen shares as represented at the meeting, belonged: fifteen to Hancock, two to Barnes and one to Penn; no other stock was outstanding, for McComb refused to accept his four shares, and the four shares issued to Donaldson, C. Mehle, W. Mehle and Sinnott, one share to each, were surrendered and cancelled on the books of the Company as the stock books shows. p. 198.

The complainant claims to have acquired five shares of stock, which originally stood in the names of Schultz, W. Mehle C. Mehle and D. B. Penn. p. 3. The stock book shows no transfer to the complainant, and the only evidence of the fact is the testimony given by himself in answer to 27, cross-interrogatory. p. 62, he says: "I bought one share from D. B. Penn for $50; "one share from the estate of W. P. Hooper for $100; "the other shares were donated to me by the holders "who were my personal friends, in the same way in "which the shares of the Tow Boat Company (in the "Herald) were given to me."

A donation of stock, or any species of property

except corporeal movables, must be evidenced in Louisiana by a notarial act, otherwise it is absolutely void.

Article 1536 of the Civil Code declares under the head of the *form of donations*, "An act shall be passed before a notary public and two witnesses of every donation inter vivos of immovable property, or incorporeal things, such as rents, credits, rights or actions under the penalty of nullity."

A donation executed before a Justice of the Peace was held to be void.

Flores vs. Lemes, 16 La. 271.

The donation of a promissory note must be passed before a notary and two witnesses.

Succession of DeGouilly, 22 A., 97.

But the donation of a check, where the payee actually draws the money from Bank, before the death of the donor, was held to be a manual gift of movable effects and therefore valid under Article 1539 of the Code.

There can be no doubt that the Board of Directors, with the consent of a majority of the stockholders given at a meeting duly convened, had the power to sell the newspaper and dissolve the corporation.

Sec. 687, Revised Statutes of Louisiana provides, that "it shall be lawful for the stockholders of any corporation at the general meeting convened for that purpose, to make any modifications, addition, or changes in their act of incorporation, or to dissolve it with the assent of *three-fourths of the stock represented at such meeting*," etc.

A majority of the stock can control the operations

of the corporation in spite of the opposition of the minority, and the right of such majority to sell the property of the corporation and wind up its affairs, is undoubted, unless the statute provides otherwise.

The Louisiana Statute does not require *the vote* of a majority of the stock to dissolve the corporation, for three-fourths of the stock *represented at a meeting* of stockholders may be, and often is, a minority of the entire stock of the corporation.

Pratt vs. Jewett, 9 Gray 34.

Treadway vs. Salisbury Co., 7 Gray 404.

Ordinarily, a majority of stock present at a meeting, control the operations of a corporation; a majority of all the stockholders need not be present.

Durfee vs. Old Colony R. R., 5 Allen, 242.

Stevens vs. Devon R. R. 9 Hare, 313.

Morawetz Corp., Section 354.

So a majority of stockholders may sell the whole property of the corporation and wind up its business, and this would be the rule in Louisiana, but for the statute which requires a vote of three-fourths of the stock represented at the meeting.

Morawetz Corp., Section 211.

The ratification of the sale made by the Board of Directors to Hernandez, was equivalent to previous authority, if such a thing were required.

Morawetz Corp., Section 77.

The complaint however is, that neither the Board of Directors nor the stockholders had authority to make the sale to Hernandez, who, as surety, had paid the amount of the twelve months bond, because Holbrook

had agreed to pay that bond; that it was a flagrant breach of duty, to apply the property of the corporation to the payment of Holbrook's debt.

This ignores the obligation of the Herald Company, and of the Picayune Company as its successor, to pay the bond and relieve Hernandez from liability as surety; the promise of Holbrook to pay the bond did not satisfy or extinguish the obligation of the Herald Company, or of the Picayune Company.

I speak of the obligation of the Picayune Company to pay the bond, because it was substituted in the place of the Herald Company, so far as the purchase of the Picayune newspaper was concerned, and the bill admits the liability of the Picayune Company, to reimburse Hernandez as surety, the amount paid by him in discharge of the bond. The fact is, the sale made to Hernandez by the Picayune Company, amounted in law to this: An agreement between Holbrook, as vendee, and the Herald Company, as vendor, the Herald Company and the Picayune Company being one, to rescind the sale, in consequence of the inability of the vendee to pay the price, and then a sale and delivery of the property by the Herald Company, represented by the Picayune Company, to Hernandez, in discharge of the debt due by the Herald Company to him, arising out of the payment, as surety, for the Herald Company, of the amount due on the twelve months bond, given for the original purchase price of the property at sheriff's sale.

It is clear, that the Herald Company, on failure of

Holbrook to pay the twelve months bond, could have instituted suit to rescind the sale made by it to Holbrook, on the ground of the non-payment of the price, to-wit, the amount of the twelve months bond.

The Civil Code of Louisiana contains the following provisions:

Art. 2045.—"The dissolving condition is that which, when accomplished, operates the revocation of the obligation, placing matters in the same state as though the obligation had not existed.

It does not suspend the execution of the obligation; it only obliges the creditor to restore what he has received, in case the event provided for in the condition takes place."

Art. 2046.—"A resolutory condition is implied in all commutative contracts, to take effect, in case either of the parties do not comply with his engagements; in this case the contract is not dissolved of right; the party complaining of a breach of the contract may either sue for its dissolution with damages, or if the circumstances of the case permit, demand a specific performance.

Art. 2047. "In all cases the dissolution of a contract may be demanded by suit or by exception; and when the resolutory condition is an event not depending on the will of either party, the contract is dissolved of right; but, in other cases, it must be sued for, and the party in default may, according to circumstances, have a further time allowed for the performance of the condition."

In Stevenson vs. Brown, 32 La. An. 463, the

Supreme Court of Louisiana say: "By Article 2046 of the Civil Code, it is provided that in all bilateral or synallagmatic contracts there is an implied condition, that if either party fail to comply with his engagements, the other may demand the resolution of the contract. The accomplishment of this condition has a retroactive effect to the day of the contract. C. C. 2041. Things are put in the same position as though the contract had never been made. In the contract of sale the non-payment of the price is the event constituting the resolutory condition. C. C. 2561. When the condition happens therefore, the property returns to the vendor free of all alienations and incumbrances imposed thereon by the vendee. 11 A. 656; 12 A. 699; 14 A. 340; 23 A. 355; 24 A. 537; 28 A. 739. The fact that the vendor has lost or has not preserved his (vendor's) lien or mortgage, presents no sort of obstacle to the exercise of this right of resolution."

In Wilmot vs. Steamer Ouchita Belle, 32 La. An. 609, the doctrine of resolution for non-payment of the price, was recognized in the sale of a steamboat.

It is true the Code provides that the resolution of a sale for non-payment of the price must be sued for, but the Supreme Court of Louisiana has decided " that whenever a necessary cause of resolution exists, the purchaser may do voluntarily what he can be compelled to do by suit.

Chretien vs. Richardson, 6 La. An. 2, and the Ouachita Belle, 32 La. An. 609.

Therefore it was perfectly competent for Holbrook as an individual, who purchased the paper from the Herald Company, to agree to a resolution of the sale,

and for the Herald Company through its representative, to sell to Hernandez in payment of its debt, the property retroceded to it by Holbrook.

This view of the transaction is confirmed by the terms of the sale from the Picayune Co. to Hernandez. Holbrook as an individual joins in that sale, but "he hereby gives a *quit claim*, and in his individual capacity makes no guarantee whatever and hereby expressly excludes all guarantees implied by law," p. 124. This language indicates that the contract of sale between the Herald Company and Holbrook, was by agreement rescinded, and that all the guarantees implied by law from the fact of sale, were given to Hernandez by the Picayune Company and not by Holbrook as vendor; his joining in the sale being merely evidence that he consented to the resolution of the sale to him.

There is a difference in the law of Louisiana between *recission* of a contract and the *resolution* of a contract. This difference is explained in George vs. Lewis, 11 La. An. p. 655.

The Court say: "Counsel seems to have misapprehended the technical meaning of the terms 'nullity or rescission' of contracts, as used in the Civil Code, and especially in Articles 2218 and 3507. The action to enforce the resolutory condition, express or implied, in a bilateral contract, is not, in legal parlance, an action of nullity or rescission. The Code itself distinguishes the two classes of actions. Article 2126, declares that obligations are extinguished in nine specified modes; nullity or recission being claimed as one

and the effect of the dissolving condition as another and a different mode. The action of nullity or rescission of a contract lies only for an alleged vice in the contract itself, tainting it ab initio; whereas the dissolving condition is never enforced, except upon the happening of some event posterior in date to the contract, and not affecting its original validity. Nullity and rescission imply the total avoidance of the convention of the parties, for some inherent defect therein; the dissolution of a commutative contract for non-compliance, by either party, with his engagements, is really the carrying into effect of a part of their convention, either expressed or implied."

The resolution of a sale has a retroactive effect, and avoids all alienations, liens and encumbrances, put on the property by the vendee; whereas the recission of a sale for an inherent vice, such as fraud, etc., takes effect only from the *decree of rescission*, and does not displace the liens which encumber the property.

Journal Du Palais, vol. 2, of 1854, p. 58.

In England, I believe the action of rescission for fraud takes effect from the time of bill filed

Run Mining Co. vs. Smith, L. R. 4, H. Ld. 75.

The resolutory condition implied in every sale is an invention of the modern civil law and is not of Roman origin. In the case of the Canal Bank vs. Copeland, 15 La. 78, the Court says: "It is well known that in the Roman law no resolutory clause was implied in the contract of sale. If the pactum commissorium was not expressly stipulated, the vendor had no right to take back his property when the price was not paid;

but where such a stipulation was made in the sale, if at the appointed time the price was not paid, the sale was completely void. From that moment the property was considered as inempta, and the vendor could take it back as his own by a simple action of revendication; but, if after the expiration of the stipulated time, the vendor once sued for the price, he thereby acknowledges the existence of the sale, and precluded himself from the right he had under the pactum commissorium, of treating it as a nullity and claiming back the property."

In that case it was held that a suit for the price, did not debar the vendor from a resort to an action for the dissolution of the sale under the resolutory condition, because in point of law such an action (as was said in 32 A. 463) is not one to *annul* the contract made with the vendee, but to *enforce it*."

The right to dissolve a sale for non-payment of the price is expressly conferred by the Code.

Article 2561, declares, "If the buyer does not pay the price, the seller may sue for the dissolution of the sale."

Article 2564, "In matters of sale of movable effects, the dissolution of the sale shall take place of right, if demanded, without its being in the power of the judge to grant any delay except that fixed by law."

In case of the sale of immovables, Article 2562 allows the judge to grant indulgence to the buyer for a term not to exceed six months.

Dougherty vs. Vance, 30 La. An. 1246, opinion

of Spencer, J., in Chaffraix vs. Lafitte, 30 La. An. 656.

Another view may be taken of this sale from the Picayune Company to Hernandez.

This view will treat the Herald Company and the Picayune Company as separate and distinct legal entities. It is manifest that the Picayune Company, its officers and stockholders will knew that no money was paid by that Company to Holbrook for the newspaper acquired by him from the Herald Company; they all knew that the Herald Company had not paid for the newspaper to the sheriff, and that the consideration price of the sale from the Herald Company to Holbrook, was his agreement to pay the twelve months bond in lieu of the Herald Company.

It was understood by all hands, that Hernandez, the surety, was to be protected from loss.

Therefore, the Picayune Company acquired the newspaper with full knowledge that the price had not been paid to the Herald Company, who was vendor to Holbrook, and that Holbrook could not put the newspaper into the possession of the Picayune Company as capital, without violating the rights of his vendor, who had a privilege thereon for the price.

Under these circumstances the newspaper went into the hands of the Picayune Company subject to the vendor's privilege in favor of the Herald Company.

Fetter vs. Field, 1 La. An. 80.

Hyer vs. Goodale, 4 La. 222.

It is therefore apparent that the Picayune Company held the newspaper subject to the obligation to pay the price, that is to say, the twelve months bond.

Now Hernandez being bound for the price of the newspaper, and the Herald Crmpany being also bound for the same debt, Hernandez who paid the debt, became subrogated by operation of law to the rights of the Herald Company as the vendor to Holbrook, and with the debt entitled to the vendor's privilege on the property in the hands of the Picayune Company; and therefore the surrender or sale of the property to Hernandez, was in effect the surrender to him voluntarily of property, on which he was entitled to enforce the vendor's privilege.

Article 2161 of the Civil Code of Louisiana declares "that subrogation takes place of right for the benefit of him who being bound *with others*, or for *others*, for the payment of the debt, had an interest in discharging it."

The maker of a mortgage note, which a third person agrees to pay, but fails to pay, is subrogated on paying it, to all the mortgage rights of the holder even against a third possessor.

Baldwin vs. Thompson 6 La. 479.

In the case just cited, Baldwin purchased certain lots of ground from Kohn, who retained a mortgage to secure certain notes given by Baldwin for the price. Baldwin sold to Green, who assumed the payment of Baldwin's notes given to Kohn. Green sold to Thompson, but did not take up or pay Baldwin's notes to Kohn; consequently Baldwin, the original purchaser, was obliged to pay them when they became due. The Court said: "Now, we consider that the debt due to Kohn, according to the agreement between Green and Baldwin, was really the debt of the former, although

the latter was also bound to Kohn. In pursuance of the doctrine of stipulation pour autrui, Green became Kohn's debtor, by means of the act of sale made by Baldwin to the former, for he stipulated expressly to pay to Kohn the debt which Baldwin owed. This subrogation revived or rather kept alive in the hands of the person subrogated, all the rights of the creditor, notwithstanding the payment made by the person subrogated."

The same doctrine is maintained by the Court in Howe vs. Frazer, 2 Rob. (La.) 424.

The legal subrogation which takes place when payment is made by one bound *with or for another*, is as extensive as an express subrogation.

Cox vs. Baldwin, 1 La. 410.

In the case just quoted, the Court says, that Pothier expressly states "in No. 427, that the surety, when he pays, may require of the creditor to subrogate him to all his rights, actions and hypothecations as well against the principal debtor, for whom he has become surety, as against all other persons who are liable for the debt," and then proceeds to declare that legal subrogation, created by payment made by a debtor, is as extensive as any express subrogation could be.

The liability of Holbrook to pay the twelve months bond was two-fold, he was liable to the holder of the bond by virtue of his stipulation to pay it, according to the doctrine of stipulation pour autrui, embodied in article 1902 of the Code, and he was also liable to the Herald Company, on his agreement to pay the bond as the price of the sale to him, therefore when Hernandez paid the bond, he became subrogated not

When Holbrook announced his inability to meet the twelve months' bond, and thePicayune Company passed the resolution authorizing the sale to Hernandez in case he paid it, nearly a year had elapsed since the organization of the Picayune Company. It was the most unpropitious year which could have been selected to rehabilitate a broken down newspaper. The court need not be reminded of the extraordinary depreciation of property of all kinds, which followed the panic of 1873, nor of the utter prostration of business throughout the country in 1874. The result was, that the paper made no money; the support of Hancock and his friends was withdrawn, he having refused to coopporate with Holbrook for the reasons stated by him; the title of the paper was in litigation as appears from the resolution passed to defend the suit 27th January, 1874, p. 111, and Hancock was threatening suit against Holbrook as a *subscriber* for sixty-five shares of stock of the Herald Company. On 19th December, 1873, the very day the Picayune Company was organized, it and was agreed the Herald Company should be suppressed, Warmoth transferred these sixty-five shares to Holbrook to give him control of the Herald Company, so that the agreement for suppression might be enforced.

Yet Hancock five days after the organization of the Picayune Company, demanded from Holbrook payment in cash for the sixty-five shares that had been transferred to him by Warmoth. The demand was made under pretext that Holbrook had incurred the obligation to pay $16,250 as a subscriber for sixty-five shares of the Herald Com-

pany, a bankrupt concern, the suppression of which he admits was agreed on.

See his letter of demand dated December 23d, 1873, p. 123.

Nicholson, who was employed on the paper during the year 1874, says that under the most economical management the paper did not pay expenses' that it "had been run down under the management of the amateurs known as the '240", that it took a great deal of trouble to build it up, that Holbrook had to advance money to it, that he was the only stockholder who advanced a single cent; p. 155. And that after he purchased it from Hernandez, he did not make money for a year or so, and he had to to raise money to keep it up; p. 156.

St. Amand, who was employed on the paper for thirty years, says it made no money in 1874; pp. 160 and 154.

This testimony is uncontradicted. Before the newspaper was transferred to Hernandez it was offered to Alexander Walker, President of the Herald Company. Gov. Warmoth says: "After Holbrook advised me that he could not pay the bond I informed Alex. Walker, President of the Herald Company of that fact, when he stated that he knew of no means by which the bond could be paid; I told him that the bond must be paid and that the property acquired through the execution of the bond must be applied to its payment, and that Mr. Holbrook had recognized the propriety of such an appropriation, and had agreed to do all in his power to that end and would surrender the property itself, which he did. And afterwards, I stated to Mr. Walker, that if he or any of his friends would pay

the bond, they should have the property, namely the Picayune establishment. At one time he said he would pay the bond and take the property, which he never did. Mr. Hancock could have had the same privilege, for all that I wanted was to find somebody to pay the debt and take the property. Mr. Hernandez paid the bond and the property was transferred to him. I furnished Mr. Hernandez the money, and subsequently, in Dec. 1874, failing to find a purchaser, the property was sold to A. M. Holbrook individually for about $27,000 on long time, payable in monthly installments, running through a period of some years. The payments of the notes given were secured by a pledge of the property, and sundry mortgage notes, which were second and third mortgages on property in New Orleans, which was not worth more than enough to pay prior encumbrances thereon and were of little or no value. After holding these notes for some time, I sold them to Charles T. Howard, and delivered to him all the securities that I held. Mr. Hernandez acted in the matter at my request, and I felt bound to protect him for his suretyship, which had been entered into as an act of friendship without remuneration." Pp. 171—2.

In confirmation of Warmoth's statement, Walker who is a hostile witness, says, that when Holbrook indicated he would not be able to pay the bond "Warmoth made an offer to me individually, that if I would pay the $20,000 (he seemed anxious about it) that he would hand over the property to me," p. 74. Further on he says: "There was some proposition of this character made to Mr. John Phelps, who was the holder of the bond, to agree

to withdraw the bond and allow us to remain in possession of the property, and that was submitted to my attorney, and give us further time to pay in case Holbrook failed to pay. We did make some proposition to Mr. John Phelps, but it had no reference to any attempt on my part to purchase the property. The Herald Company had nothing to do about it," p. 745.

Although Hancock says, time was not offered to him to meet the bond, he admits "that he did not intend to meet the bond, nor did I feel under any obligation to meet the bond, and under no circumstances would I have contracted one dollar for the payment of the bond, as I did not owe it, p. 61, 62

Mr. Hernandez says that Walker came to him first to sign the bond as surety for the Herald Company, but he did not like it much "and Walker said that Governor Warmoth would secure me; then Governor Warmoth came to me personally and said he would secure me against loss," p. 98.

The answer of Hernandez in the suit of Walker vs. Warmoth, instituted in the State Court was offered in evidence in this suit, as part of his testimony. That answer shows that Hernandez signed the twelve months' bond, "as an act of friendship, without remuneration, at the instance and request, and under the positive assurance of Warmoth, that respondent should be fully secured against any responsibility for the same, all of which was well known to the President of the Herald Company, the plaintiff, who assured respondent, that he should be held harmless for said bond and

not be called on to pay the same. That subsequently said Warmoth informed respondent, that the Herald Company could not furnish or give any security for the payment of said bond at maturity so as to hold respondent harmless therefrom; that the said Herald Company was insolvent, and that it owed him, Warmoth, a large amount of borrowed money, which it could not pay, and for the purpose of protecting respondent, and getting the borrowed money due him secured, he had with the approval of the plaintiff (Walker) entered into negotiations with A. M. Holbrook to have the said property purchased by the Herald Company at said Sheriff's sale to wit: the Picayune newspaper and Printing establishment, transferred to said Holbrook, who would assume the payment of the said bond at maturity, and hold respondent harmless for the same as security for the Herald Company, then said to be insolvent, and unable to pay its debts. That as a part of the transaction by which said property was transferred to said Holbrook, it was understood, that all the parties composing the Herald Company should become members of a corporation to be formed between them and the said Holbrook, the capital of which should be the said Picayune newspaper and Printing establishment, and that the said Herald Company should be extinguished, all of which was done. That just before the maturity of the said twelve months' bond, the said Holbrook notified respondent that he would not be able to pay said bond; that respondent thereupon called on said Warmoth, to keep good his understanding to hold respondent harmless, and to furnish the the means of paying said bond, which said Warmoth

professed his willingness to do, and furnished respondent with the funds necessary for that purpose; when however, respondent was about to take up said bond, having been notified by Julius Aroni, Esq., the attorney-at-law of said Walker, or of said Herald Company, that he, the said Aroni, would on the part of his client, pay and satisfy and extinguish said bond before the maturity thereof; that subsequently, however, said Aroni further notified respondent that his client could not pay the bond, thereupon to protect his credit as a man of business, respondent took up the bond in the Canal Bank, the then holder thereof, and having thus paid for the property for which, the said bond was given, respondent demanded of said A. M. Holbrook that the said property should be transferred to him which was done, and respondent received and held the same for the benefit of H. C. Warmoth, in fulfillment of his agreement, and who had furnished the money to take up the bond. That thereupon or thereafter, the said Warmoth made a contract of sale of the said property so purchased as aforesaid to said Holbrook, when your responent transferred the same to said Holbrook, and delivered to said Warmoth all the documents connected therewith." Pp. 180—1.

The cross-examination of Hernandez confirms the accuracy of the above statements, pp. 183—4, 5—6.

The testimony of Warmoth is to the same effect. Pp. 170—1—2.

The answers of A. M. Holbrook as garnishee, filed 12th of June, 1874, in the suit of Weed vs. the Herald Company in the State court, were offered

in evidence in this suit by plaintiff; they show that in the original negotiation with Holbrook to assume the payment of the twelve months' bond, Warmoth had also required Holbrook to pay him $10,000.

This sum was reduced to $5000 in two notes of $2500, which he gave to Warmoth, and in addition thereto, he assumed the payment of the twelve months' bond. When Walker, the President of the Herald Company, was about to make the transfer of the Picayune establishment to Holbrook, "all mention of the property of the Herald Company was omitted therefrom; to this I objected, and insisted that a great motive for the purchase on my part was to control the Herald newspaper so as to prevent its publication as a rival to the Picayune, when it was stated by Warmoth and assented to by Alexander Walker who represented, that the Herald Company owed debts which its property must be applied to pay, and if I took all its property I would be called on to pay its debts, which I was not willing to do. Warmoth then proposed to transfer to me in lieu of said property sitxy-five shares of the full paid stock of the Herald Company, which he owned, which was according to his representation and the representation of said Walker, the President of the Company, a majority of its stock, and being the holder of this stock I could prevent the renewal of the publication of any newspaper, or its continuance as a newspaper Publishing Company. I took the transfer of the Picayune establishment, assumed the twelve months' bond given to the Sheriff, and received of Warmoth the certificate of the sixty-five shares of full paid stock, which I considered as worthless, except for the one purpose of preventing the publica-

tion of a newspaper by the Herald Company. I gave my two notes for the twenty-five hundred dollars each, dated the 19th December, 1873, payable one and two years after date, and handed them to H. C. Warmoth in the presence of Alexander Walker, President of the Herald Printing Company, at the time of the completion of the transfer by which I became the transferee of the Picayune newspaper establishment. It was understood and agreed as part of the whole transaction, that when I became the owner of the said Picayune establishment, I was to transfer the same to a corporation to be formed under the laws of the State, for the publication of a newspaper, to be known as the Picayune, the stock of which should consist of one hundred and twenty shares, sixty-five of which were to be my property or controlled by me, and the other fifty-five shares to be belong to and be divided among the stockholders of the Herald Printing Company, all of which stock was to be considered as full paid; such a corporation was to be formed by public act, and sixty-five shares of said stock allotted to me and my friends, and the other fifty-fiive shares thereof were allotted to persons whose names were furnished by Alexander Walker, President, and E. C. Hancock, Secretary of the Herald Printing Company, as the stockholders who were entitled to shares from having been stockholders of the Herald Printing Company, the names are as follows: E. C. Hancock, 15 shares; Alexander Walker, 10 shares; Joseph Hernandez, 8 shares; Henry S. McComb, 4 shares; Frank H. Hatch, 1 share; and H. L Swords E. Lawrence, Pritchard & Bickham, W. H. Bell, Wm. Mehle,

D. B. Penn, John T. Sinnott, Cyrus Bussey, A. Schultz, Lovell & Bailey, J. Donaldson, Christ Mehle and W. P. Harper, one share each; and David Bidwell and Thomas Brown Two shares each. The said two notes, amounting to five thousand dollars, were delivered by me to H. C. Warmoth, whether he holds them now I do not know; but I do not owe them and do not intend to pay them, as the consideration for which they were made has entirely failed; that consideration was that the Herald Printing Company's property should not be used for the purpose of publishing another newspaper in New Orleans, but the same should be sold, or so disposed of as to pay the creditors of said company, which agreement has been violated, and the said property has been used, and is now used for the printing and publishing of the Bulletin newspaper, now published in New Orleans, to the great injury of myself and the Picayune newspaper establishment, and this has been done by the Herald Printing Company in opposition to my wishes, and in violation of the contract made with me. I do not owe and will not pay said notes if I can avoid doing so." pp. 118-120.

Again he says: "That Warmoth represented that he had control of the Herald Printing Company as the owner of a majority of the shares of its stock, this representation was not denied by the officers of the Herald Company who were present, they produced the said certificate of stock under his orders. I did not know how Warmoth became in possession of said certificate, further than that he represented himself to be the owner of the stock, and ordered the officers of the Herald Company to

issue the certificate of stock to me, in place of stock owned by him, and as they obeyed him, I had no doubt that he had the authority to do so at the time. I do not know how said Warmoth came in possession of said shares further than that he stated, and the President of the Herald Printing Company assented to the truth of the Statement that he, Warmoth, was the owner of eighty shares of the full paid stock of said Company which he had owned, and that these sixty-five shares were part of said eighty, so owned by him." P. 120.

Holbrook died before the institution of this suit which was commenced 25th of November, 1876; on his death, which took place 6th Jany, 1876, his wife, Mrs. E. J. Holbrook, succeeded to his estate as universal legatee; p. 136. She married the defendant, Nicholson, on 27th of June, 1878, and the marriage contract provided that there should be no community between her and her husband. P. 195.

The law allows such, an agreement, C. C., Art. 2392.

The answer of Nicholson, which was filed 15th March, 1875, avers that he knew nothing of the matters charged in the bill, which occurred prior to December, 1874, when the Picayune Company was put in liquidation; but he was then a stockholder for two shares, and voted for the dissolution of the corporation; he admits that he owns one-fourth of the paper, having acquired it by purchase, for valuable consideration, from Mrs. Holbrook, after the death of her husband, and denies all the allegations of fraud and conspiracy contained in the bill, pp. 33–4.

Howard had no connection with the transactions complained of, except as purchaser of Holbrook's notes from Warmoth, and as pledgee of the property—pledged to secure the notes; he became purchaser and pledgee 2d June, 1875, pp. 150 and 152.

His claims have been paid and he has no interest in the suit. Hernandez never had any real interest, as he was guaranteed by Warmoth, and was supplied by him with funds to take up the twelve months' bond.

R. W. Holbrook and St. Amand had no interest, except as friends and representatives of A. M. Holbrook. Walker, though he pretends that he owned ten shares of the Picayune Company's stock, is flatly contradicted by Howard, who says that he lent Walker $1,000, and took his ten shares in the Picayune Company as collateral security; this was prior to the sale of the Picayune to Hernandez. Walker transferred the shares to him with a blank power of attorney, with the understanding that if Walker did not pay his note at maturity, Howard should have the right to sell the stock. Walker having failed to meet his note, Howard sold the ten shares to Holbrook in December, 1874, pp. 182 and 188. The stock book shows that Walker's shares were transferred to Howard December 17, 1874, and on 19th December, Howard transferred them to R. W. Holbrook, who held them for account of his brother, A. M. Holbrook, pp. 197 and 199.

Who, then, were the conspirators? How could there be a conspiracy without Warmoth's participation? He managed the whole affair from beginning to end, and yet

the bill does not undertake to charge Warmoth with any collusion with Holbrook, or with any other improper combination. The evidence shows that Warmoth was the only man who risked his credit for, or put any money in the concern; he was also a creditor of the Herald Company, independently of the liability he assumed on furnishing Hernandez as the surety for that Company, in its purchase of the Picayune; hence, his desire to consolidate the two papers under an arrangement with Holbrook, by which he might feel secure in his guarantee to Hernandez and obtain $5,000 for his advances and his services, which he did obtain in the two notes of Holbrook for $2,500 each. Warmoth, at this time, evidently exercised considerable influence over Walker and Hancock, who managed the Herald, as he was supporting that paper with his means, and enabled the Herald Company to buy the Picayune newspaper. It is manifest, that Walker and Hancock looked to Warmoth as their main support, and for that reason entrusted him with eighty shares of stock to dispose of for the benefit of the Herald.

Although Walker and Hancock had paid each $2,000 for the purchase of the material of the Republican, to start the Herald, that was exhausted, as well as the subscriptions of Warmoth and his friends, and the fortunes of the Herald Company were entirely placed in the hands of Warmoth. Hancock himself says, in his testimony given in the case of Weed vs. Herald Company, 14th May, 1874: "In regard to my having been recorded

" as owning forty shares, that, in reality, I was to own " nothing; that the shares *signed off by the other stockhhold-* " *ers at the rate of fifty per cent.*, and the balance of the " unplaced stock were, by agreement, issued to us for ser- " vices rendered, *on condition* of their transfer in blank to " Gov. Warmoth. All these facts Gov. Warmoth had " full knowledge of. I was actuated in this action by a " *desire to vitalize the stock and to protect the creditors* of " the Herald, and to make the Herald a success," p. 95.

They say that these shares were put under Warmoth's control for the purpose of raising money for account of the Herald Company. Warmoth says, they were given to him to secure him for money due to him by the Company, " and with the express understanding that I was " to use them when necessary, and I thought this as " necessary an occasion as could occur; the Herald " Company's stockholders being, as I thought, greatly " benefitted thereby, as the stock had no value for any " other purpose that I knew of. The Herald Com- " pany was undoubtedly insolvent; it was unable to " pay me the money it owed me, and those other " debts, which it was unable to pay, but some of " which I subsequently paid myself, and was subroga- " ted, and which it never did pay," p. 171.

Walker and Hancock who paid, as I have said, $2,000 each, into the Herald Company, subscribed for forty shares each, making eighty, which had remained unsubscribed for. They paid for the forty shares each by assuming their services were worth the amount of the

stock, and caused the Board to pass a resolution giving them the stock for their services. They then gave the stock to Warmoth as full paid stock to be used, in the interest of the Herald Company. Warmoth did use it with the consent of Walker to carry into effect the agreement for the suppression of the Herald Company, when it was agreed to consolidate the two papers. Sixty-five shares of it was transferred to Holbrook, with the consent of Walker, in the manner and under the circumstances mentioned by Warmoth, and confirmed by Holbrook, pp. 171, 119. Walker subsequently claimed to participate in the proceeds of the $5,000, in notes given by Holbrook to Warmoth. He based his claim on the ground that these notes were given for the sixty-five shares aforesaid (see Walker's letters, p. 88), whereas Holbrook and Warmoth both state the shares were worthless, and were transferred merely to give Holbrook the power to secure the suppression of the Herald. Warmoth always claimed these notes as his property, because he was a creditor of the Herald Company, for advances, and because he was entitled to remuneration for his services. Hancock took that view, for he refused to claim any part of the notes, pp. 95-6. It is true that Holbrook did not intend to pay these notes, because, notwithstanding the agreement to suppress the Herald, its type and material had been used to start an opposition paper, called the "Bulletin," p. 120. But subsequently, Holbrook paid these notes to Warmoth in cash, when Hernandez, for account of Warmoth, re sold the Picayune to Holbrook, in December, 1874.

Afterwards, Weed, a creditor of the Herald Company, compelled Warmoth to pay him $1000, as appears by the judgment against Warmoth as garnishee, p. 207. But with this controversy between Warmoth and the officers of the Herald Company, or the creditors of that Company, we have nothing to do.

The dealings between Holbrook and Warmoth or Hernandez, were adverse dealings between debtor and creditor; Warmoth desired to be paid the amount for which his friend Hernandez was liable, he being guarantor of his friend. The mortgage notes or securities which had been given to Hernandez to protect him at the time he became surety on the twelve months' bond, were worthless second and third mortgages. (Nicholson, p. 187; Warmoth, p. 172). If these mortgage notes had been valuable, Warmoth would not have been anxious to get some one to buy the paper and pay the bond; when he offered the paper to Walker for that sum, Walker says "*he seemed anxious about it,*" p. 74.

We know the value of second and third mortgages after the panic of 1873, when as an almost universal rule the first mortgagor bought in the property at the foreclosure sale, for the amount of his mortgage or less, and often was compelled to buy because there was no other bidder

Neither Holbrook nor the Picayune Company could meet the twelve months' bond at its maturity, nor could the Herald Company, or any of its people. Hancock never desired to do so. Warmoth had no interest in the Picayune Company, and was only interested to take care of himself; he through Hernandez demanded the sur-

render of the property which he had paid for. Holbrook thought the demand just, especially as the Picayune Company had made no money. The title of the Picayune paper was in litigation, and the dissensions between Holbrook and Hancock and Walker had destroyed all hope of success, and the whole country at that time was in a state of financial distress. Holbrook called together his Board of Directors, which authorized the sale of the paper to Hernandez, in case he paid the bond. The sale was made, and at a meeting of the stockholders, held on December 22, 1874, ninety-one shares being represented, the sale was approved by a unanimous vote.

Although the sale from the Picayune Company to Hernandez was made on December 15, 1874, it was found necessary to continue Holbrook in temporary possession as *agent*, because neither Warmoth nor Hernandez had any experience in conducting a newspaper. The character of the property was such that the cessation of the publication for a single day was ruin or destruction.

At the time Hernandez purchased the paper there was no understanding or agreement to resell to Holbrook, (see Hernandez, p. 187). As he had no interest in the transaction, his evidence is free from suspicion. Besides, Warmoth explains why there could not have been any such understanding at that time.

He says there could have been no understanding at that time, because after Holbrook agreed to sell to Hernandez, in payment of the bond, "I went to Walker and "insisted that the bond should be met, and that Hernan-

" dez and I should be held harmless, and Judge Walker " said he would see ; he thought he would get somebody " to furnish the money and take the property, and I told " him if he would get the money and pay the bond, I " would surrender to him and his friends the entire prop- " erty ; all I desired was to protect Hernandez as surety " on that bond, as I had guaranteed him against loss, and " it did not make any difference to me who paid it, so long " as it was done, and he said he would see if he could not " get somebody to do it. I saw him several times on the " subject, and he finally utterly failed to get anybody to " furnish the money or guarantee Hernandez. I was left " with the bond to pay and the possession of the proper- " ty," p. 177.

In the meantime the paper was being published under the name of " A. M. Holbrook, Agent," and it was not resold to Holbrook by Warmoth until December 22, 1874.

The name of Warmoth was suppressed for the reason given by him in regard to the stock in the Herald Company, " because Hancock and Walker thought it would " be better for my name not to appear on the books of the " Company, because, being in public life, and a politician, " they thought it might injure the reputation of the paper, " if it was known that I had the controlling interest in the " stock, and my name did not appear on the books for that " reason," p. 174.

Hernandez, of course, did not wish to have his name appear, or to be responsible for the contracts of the paper. This condition of things continued for a week,

when, on December 22, 1874, Hernandez sold the paper to Holbrook. The price expressed in the sale was $20,-211.35, payable in twenty-seven small notes, with 6 per cent. interest, running through a period of three years and two months, the first note falling due December 10, 1875, and the last on February 10, 1878, pp. 146-7.

These notes were secured by a pledge to Hernandez of the Picayune establishment and the worthless mortgage notes already mentioned, and Hernandez, as pledgee, put a keeper in possession, pp. 144-150.

On the same day Holbrook made a subordinate pledge of the same property to Warmoth, to secure the payment of nine notes in sums of from $500 to $800, amounting in the aggregate to $7,138.62, payable on the tenth of every month during the year 1875, p. 151.

In addition to this, Warmoth required Holbrook to take up the two notes of $2500 each, which had been given the year before, when the Picayune was sold to Holbrook; these notes he had determined not to pay, on the ground that the contract for the suppression of a rival paper had been violated by the publication of the Bulletin, which had risen from the ashes of the Herald. The total price of the paper was $27,000, but it was payable on long time, and in small notes, and it was poorly secured by a pledge of property, whose value depended entirely on success and good management.

Warmoth says he did not consider the price paid him equivalent to $20,000 cash, because the security was worthless, the time was long and the interest reduced to 6 per cent.; it was the best arrangement he could make.

He would have taken $3,000 less than the face of the twelve months' bond, rather than take the property ; that on the market the notes secured by the pledge would not have sold for twenty-five cents on the dollar, p. 179.

It is true that afterwards he sold the notes for their par value to Howard, on June 2d, 1875, but Warmoth tel's us that "Howard bought the notes simply and "solely for the purpose of having the whip hand over "Holbrook, to keep the paper from pitching into his lot-"tery. He did not buy it for an investment. He bought "it to get Holbrook by the throat, as the creditor does "his debtor," p. 180.

Howard, in fact, does not deny what Warmoth asserts. Warmoth's testimony on this point was read to Howard, and when asked whether it was correct, he contents himself with saying :

"I never gave the governor any reason for that un-"derstanding. I bought them as an investment, *think-"ing the paper might get into trouble*, and I might be own-"er," p. 129.

Howard's experience in the newspaper business is that, he lost $25,000 by the Bulletin, for which he had paid $20,000 ; that there is nothing a man can lose money in quicker than a newspaper, except a theatre; that he always lost money in newspapers, the value of which depends on popularity and management, p. 129.

There are some loose estimates of the value of the Picayune at the time it was sold to Holbrook by Warmoth, but the best evidence is that it was sold at sheriff's

sale, in December, 1873, for $20,000 on twelve months' credit ; it was not possible, in the year 1874, to have recuperated. The positive evidence adduced that the paper made no money during that year, and that Holbrook had to advance means out of his own pocket to pay expenses ; the demoralizing effects of a pending suit assailing the validity of the title acquired at the sheriff's sale, and of the dissensions between Holbrook, Howard and Walker, which Warmoth describes in characteristic language, p. 176, all sustain the estimates of Nicholson and St. Amand.

Warmoth seemed to have been the confidant of Hancock, Walker and Holbrook. Each poured into his ear a flood of grievances, and Warmoth says, " they seemed " to agree that they were all a pack of d—d scoundrels. " Walker thought that Hancock and Holbrook were " rogues; Holbrook thought that Hancock and Walker " were rogues, and Hancock thought Holbrook and " Walker were rogues," p. 176.

Under these circumstances, no newspaper could have improved at any time, much less in the disastrous period of 1874, when business was stagnant, all property depressed, and Louisiana in a condition of bankruptcy and revolution.

If the paper had been so valuable, why could not Walker have found a purchaser ? It was offered to him by Warmoth for the amount of the bond.

Mr. Bigney estimates the Picayune to have been worth in 1874, $50,000. This is based on the idea that

Holbrook sold it in 1872 for $100,000, and that its Hoe press, like that of the Republican, was very valuable; but he himself says the entire establishment of the Republican, press and all, sold for $3,000, although the press alone cost $30,000. He did not know the Picayune had run down since 1872, nor anything of its management, and on his cross-examination it is manifest his opinion is mere guess-work, pp. 100–102.

Mr. C. E. Whitney's experience was that acquired by a newspaper man in eight years' connection with the press. His testimony is not even as trustworthy as that of Mr. Bigney, because he did not have the same information, p. 103. All the witnesses concur in the opinion that the value of a newspaper depends on its management and success.

Walker admits the Picayune depreciated and was run down under the administration of the 240 amateurs, and that the value of a paper depends entirely upon its administration; he puts a high value on the paper, but that was because of his *estimate of himself* as an editor. He says, "the Picayune was stronger and had the most "competent men to manage it than it had for years, and "that, I considered, increased its value," p. 105. Those most competent men were himself—*above*—in the editor's room, and Holbrook below, in the business office, for Hancock is not taken into the account, he having retired from the paper in disgust early in the year 1874.

Walker was asked, whether or not the value of a paper does not, to a large extent, depend upon its

"tone," taking the word in its technical sense. He answers, "Yes, sir; the only words I considered neces-"sary to state to Mr. Holbrook were, to manage the "business below, as I did the business above, that is, "writing for it," p. 105.

St. Amand, whose knowledge is based on facts derived from connection with the paper for thirty years, estimates its value at the time he testified, 4th June, 1879, to be $25,000, p. 154; it only had a daily average circulation of 8,000, p. 160.

Nicholson estimates the value of the paper in 1879 at $20,000, p. 156.

The books of the Picayune newspaper were brought into court and examined, and it is manifest that if any very large amount of earnings had been made since the purchase by Holbrook, in the years 1875, 1876, and subsequently, extracts from the accounts would have been offered in evidence, p. 159. These books also furnished ample means of contradicting Nicholson in his statements as to the paper and its earnings, and yet they were not used for that purpose.

He says, the patronage of the paper increased more in 1878 than in any other year, but at the time he was speaking, June, 1879, the concern was pretty much run down; everything was old, p. 156.

He also says, that the Picayune acquired no value from its consolidation with the Herald Company, because the "advertising of the Herald had to be carried "out, without any compensation. All the subscriptions

"were paid in advance, or were deadheading. It did "not confer any value on the Picayune, p. 156.

Although Hancock and Walker deny that the Herald Company was insolvent at the time of the agreement for its suppression, the record teems with evidence to the contrary.

Hancock himself admits that the arrangement made with Warmoth, at the time the eighty shares were put in Warmoth's hands, about December 3d, 1873, (p. 95), that the shares were subscribed for by them for services, on *condition* of their transfer in blank to Warmoth, it was understood that he, Hancock, *was to own nothing*, and the other stockholders had *signed off fifty per cent. of their stock*—this was done to *vitalize the Company* and *to protect creditors*, p. 95.

The judgments of Houlihan, for $6,800, and execution in May, 1874, p. 143-5; of Weed, for $999.68, p. 207, and of Meyer and Neumeyer, for $771,25, p. 841, and testimony of Warmoth, are sufficient to establish the insolvency of the Herald Company.

This sale to Holbrook, by Warmoth, through Hernandez, was made December 22, 1874. It was a public and notorious act; it was recorded in the Mortgage office on 24th of December, 1874, p. 148.

Hancock was aware of what transpired, yet his voice was not raised in opposition to the conduct of the parties in dealing with the property as they did. He studiously abstained from all action; he was actually advised by his attorney that Hernandez, the surety on the twelve

months bond, had no recourse on the property, p. 61.

Under these circumstances, is it not silent acquiescence ? He allowed Holbrook to go on, though the critical year of 1875, until his death, on 2d, January, 1876; he allowed his widow and universal legatee, at her risk, to carry on the paper, until near the end of the year 1876, before he commenced this suit.

According to his own admission, he had abandoned his interest in the Herald Company, when Warmoth was invested on 3d December, 1873, with the eighty shares of the stock, his object being to vitalize a moribund company and protect its creditors.

What loss has he sustained, except the speculative advantage resulting from success, accomplished by the labor and means of other people, and he does not venture to assert his speculative claims until events have determined the question of success or failure.

Is not this case within the principle announced by the Court in the case of Twin Lick Oil Co. vs. Marbury, 91 U. S. 587 ?

The option to avoid a transaction of this nature must be exercised within a reasonable time. "This has "never been held to be determined by any number of "days or years, as applied to every case, like the stat- "ute of limitations, but must be decided in each case "upon all the elements of it which affect that question. "These are generally the presence or absence of the "parties at the place of the transaction, their knowl- "edge or ignorance of the sale and of the facts which "render it voidable, the permanant or fluctuating char-

"acter of the subject matter of the transaction, as "affecting its value, and the actual rise or fall of the "property in value during the period within which this "option might have been exercised."

The Court further say: "in this class of cases the "party is bound to act with reasonable diligence as soon "as the fraud is discovered, or his right to rescind is "gone. No delay for the purpose of enabling the de- "frauded party, to speculate upon the chances which the "future may give him of deciding profitably to himself, "whether he will abide by his bargain or rescind it, is "allowed in a court of equity."

In this case, it is alleged that the Picayune Corporation undertook to dispose of the property of the corporation in an illegal manner; this complaining stockholder knew all the facts, was present when the transaction took place; a transaction public and notorious; he admits that the corporation was justly and equitably liable for the debt, and that no moral wrong has been done; the character of the property is such that its real value depends on the personal qualities of its managers, and its success through those qualities; he stands by for twenty-two months without one word of complaint, and then, when the labor and the money of others had imparted additional value to the property, he seeks to annul the transaction and appropriate the property to himself. What equity is there in such a contention?

Respectfully submitted,

THOS. J. SEMMES,

For Appellees.

112-229

FILED
APR 10 1884
JAMES H. MCKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES.

No. 377.—October term, 1883.

EDWARD C. HANCOCK, APPELLANT,

versus

MRS. ELIZA JANE HOLBROOK, ET AL.,
APPELLEE.

ROBT. MOTT,
of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 377.—October term, 1883.

EDWARD C. HANCOCK, APPELLANT,

versus

MRS. ELIZA JANE HOLBROOK, ET AL.,
APPELLEE.

STATEMENT OF THE CASE.

The Picayune Printing Company was organized 19th December, 1873, under the laws of Louisiana as a corporation, by the stockholders of the Herald Printing Company, which thereupon ceased to exist as an operative company. The stock consisted of one hundred and twenty shares of $250 each, full paid. See charter pp. 11, 12, 13, P. T. All the stock with two small exceptions, was distributed among the stockholders of the Herald Printing Company, whose shares in that company amounted to one hundred and twenty shares; the other shares some thirty or more, were not considered as valid or provided for. The Board of Directors of this Picayune Company were Alva M. Holbrook, Peter St. Amand, R. W. Holbrook, Alexander Walker, and E. C. Hancock. The purpose and object was printing and publishing a newspaper, recently purchased at Sheriff's sale known as the Picayune

newspaper establishment, which had recently been purchased, by the Herald Printing Company, and which was sold and transferred by the said Herald Company to said A. M. Holbrook, who sold it, in the charter to the last formed corporation for the sum of $30,000 cash, which Holbrook acknowledged to have received and the company to have paid, p. 12, P. T.

The charter was signed by Holbrook, Walker, Hancock and others; by Holbrook for 65 shares; Alexander Walker for 10 shares; J. Hernandez, for 8 shares; R. W. Holbrook 1 share; E. C. Hancock for 15 shares; Peter St. Amand 1 share. See p. 13, P. T.

The plaintiff Hancock claims that he owns 20 shares of the stock, that Holbrook, the President, controlling a majority vote of the stock, sold out the establishment to Hernandez, and deprived him of his stock. The facts are that the Herald Printing Company conducted an evening newspaper in a feeble and struggling manner. It was largely in debt. See judgments at pp. 84, 143, 152, 206 and 207, P. T.

It was conducted by E. C. Hancock and Alexander Walker, two experienced and able newspaper men. When the old Picayune newspaper establishment was advertised to be sold by the Sheriff in December, 1873, it was bought by the Herald Company on a twelve months bond of $20,000, it was necessary to furnish satisfactory security on that bond, so Warmoth, a large creditor of the Herald Company, as well as a stockholder thereof, by agreeing to hold him harmless, induced Joseph Hernandez, another stockholder of the Herald Company, to sign the bond as surity, and the Herald Company became the owner of the Picayune news-

paper establishment owing said bond besides sundry debts afterwards reduced to judgment. See P. T., pp. 84, 143, 152, 206, 207, thus loaded down with a debt of $20,000 besides smaller amounts. Something else than a broken newspaper and two editors, was required; there was no money and no credit in the concern. Holbrook was another newspaper man, he had experience in former years, in successfully managing the old Picayunè newspaper. There were 65 shares of the stock of the Herald Company, which had been issued, these were delivered to Holbrook; this made 120 shares of the stock of that company. Holbrook was to assume and pay the $20,000 bond, given for the price of the Picayune establishment, to put the same in the new company at $30,000 cash, the whole capital thereof, and to have the controlling interest in the new company; Hancock and Walker, were to be editors.

The enterprise was not successful. See testimony of St. Armand, Holbrook, Nicholson, pp. 154 to 170, P. T.

None of the stockholders had paid any money for stock. Hancock and Walker, the editors, did not furnish brains and labor in the place of money, they began to quarrel immediately after the organization; Hancock attended one meeting of the Board of Directors, and did no work on the paper. He was its enemy and worked against it; Walker was almost as bad; the result was bankruptcy. It took all Holbrook's means and labor to keep the concern going, and the twelve months' bond was maturing.

Hernandez called on the Company in possession of

the property to pay. He was a man of means and compelled to pay. Holbrook for himself and the Company declared his inability to pay owing to the state of affairs that had existed. Hancock and Walker and the Herald people would not pay, contending that the bond was not binding on them as the property had gone into the Picayune Company as the capital thereof, furnished by Holbrook. Hernandez then demanded the property that had been acquired through the bond he signed as security; the Directors of the Picayune Company recognized the justice of his claim and passed the requisite resolution to convey him the property, which was done, and the stockholders by a large majority ratified that action. Hernandez produced the bond paid by him; the property was conveyed to him, and he offered it for sale to any one who would pay him the amount of the bond; it was offered to Walker, President of the Herald Company, who, after consideration, declined to pnrchase; he and his Company could have had the same terms as those, afterwards given to Holbrook. While owner, Hernandez had the newspaper published. Hernandez sold the paper to Holbrook on time, and he became the sole owner, any one could have become the owner on the same terms.

The Picayune Printing Company was dissolved by a meeting of the stockholders, legally held; it had nothing left to do, the newspaper was gone and with it the vitality of the Company.

The stockholders had become by the dissolution mere individuals; and each one of them had a right to purchase its property when offered for sale. One

of them did purchase, and the question to be settled is, did he become a trustee for the others, or any of them.

The plaintiff avers that the stock had become reduced to fifty-one shares, by the failure of Holbrook to pay the bond and the renunciation of shares by stockholders; if this be true, still Holbrook was the owner of a majority of the stock, say thirty-one shares. Hancock claims to have owned twenty-one shares that left thirty-one shares; these all were represented at at the meeting of stockholders which dissolved the corporation and authorized the sale of the newspaper to pay the bond. given for its acquisition and, these thirty-one shares were before the institution of this suit the property of Holbrook, he had purchased them and was the owner; a pertinent inquiry is, what did Hancock pay for the twenty shares claimed by him?; nothing but his interest in the insolvent Herald Company. No tender was made of the amount of the bond, and no effort made to pay it except by Holbrook.

This case is so well stated in the opinion of Judge Billings who decided in the court below, that I quote it in full.

Billlngs, District Judge. This case is submitted for a final decree upon bill, answer, depositions and exhibits. The suit included Charles T. Howard as one of the defendants, whose claim upon the property hereafter described was admitted by all parties in this suit and has since been satisfied. His rights therefore are not submitted for adjudication. Of the other defendants, Mr. and Mrs. George Nicholson, (who claim title

under A. M. Holbrook) is demanded twenty of fifty-one equal parts in the establishment known as the "Picayune Newspaper and Printing Establishment" with an accounting and decree for profits. The facts which are either admitted in the voluminous pleadings or established by the evidence are as follows :—On the 19th day of December, 1873, there existed in the city of New Orleans, a corporation known as the Herald Printing Company, which at that date bought at sheriff's sale, on a twelve months bond for the price of $20,100, the New Orleans Newspaper and Printing Establishment, giving as a surety upon the bond Joseph Hernandez; Ex-Governor H. C.Warmouth induced Mr. Hernandez to go upon the bond, agreed to hold him harmless for so doing, and seems to have been the party really furnishing the security. The Herald Printing Company was a corporation in which the complainant and Alexander Walker were largely interested, and it published a newspaper called the New Orleans Herald, of which these last named gentlemen were editors and managers.

Chiefly through the influence of Warmouth an agreement was formed and carried out in accordance with which the Herald Company conveyed the Picayune establishment, recently purchased, to A. M. Holbrook, who agreed to pay the twenty thousand dollar twelve months' bond, and a new corporation was formed, under the general law authorizing the same called the "New Orleans Picayune Printing Company, to print and publish a newspaper or newspapers, and carry on a printing and publishing business of every kind.

To this corporation Mr. Holbrook was to convey and did convey, the Picayune establishment, derived from the Herald, which constituted its capital, fixed by its charter at $30,000 and divided into one hundred and twenty shares at the par value of $250 each. Of these shares A. M. Holbrook was to receive, and did receive, sixty-five shares, the complainant fifteen shares and Alexander Walker ten shares. The complainant and Walker, along with all the other stockholders, received shares in the Picayune establishment, in the same proportion as they had held shares in the Herald undertaking. The Herald was no longer published and became merged in the Picayune, which last was to be conducted under the new charter. That charter provided that "the corporation shall be governed by a Board of Directors of five persons."

The first Board of Directors was declared to consist of A. M. Holbrook, Peter St. Armand, R. W. Holbrook, Alexander Walker and E. C. Hancock, (the complainant.) The Board of Directors had, by the charter power given them "to adopt such by-laws as may be necessary to manage the Company, and appoint such officers and clerks as may be required." It seems to have been distinctly understood, not only that A. M. Holbrook should have a majority of the stock, but that of the five directors, who were to serve for at least one year, and who were named in the charter, two should in some sense be representatives of him, namely: Mr. St. Amand and R. W. Holbrook (his brother,) to each of whom was transferred one of A. M. Holbrook's shares. The corporation went into operation then with three directors, who held shares

as follows: A. M. Holbrook, sixty-three shares, Peter St. Amand, one share, R. W. Holbrook, one share, E. C. Hancock, fifteen shares, A. W. Walker, ten shares. The persons who held the remaining shares were named in the charter, though all of the certificates do not seem by the stock book to have been issued. The complainant subsequently derived title to two shares by purchase, one from D. P. Penn and one from the estate of William P. Harper, and three were donated to him by holders who were personal friends. The charter bears date December 19th, 1873. There seems to have been an understanding between the complaint and Walker, which is corroborated by Warmouth, that Walker was to be chief editor and complainant the managing editor, and A. M. Holbrook the business manager. But unfortunately this understanding was merely verbal, and was not recognized by the terms of the charter, which placed all these matters under control of the directors, and on December 26th, 1873, a set of by-laws was enacted, all of the directors being present, and all voting in favor of their adoption except the complainant, which clothed the president (A. M. Holbrook) with authority to "organize the various departments of the paper, and employ and discharge all editors and employees, and fix their salaries, and to have the general supervision of all the operations and transactions of the corporation." This action of the directors disclosed how wide was the misunderstanding between complainant and Walker, on the one part, and A. M. Holbrook, who was sustained by the charter, on the other part.

On the 16th day of December, 1874, the twelve months' bond for $20,100 was to mature. Shortly before this time A. M. Holbrook announced to all concerned his inability to pay the bond, and his determination that the property purchased with the bond should be used in the payment of the bond. Through Warmoth, offers were made from Holbrook to Walker, that if he or any of his friends would pay the bond, they should have the Picayune. This Mr. Walker was unable to do. Mr. Aroni, as the counsel of some one, at one time offered to make the payment and take the property, but subsequently withdrew the offer.

On December 14th, 1874, the majority of the Board of Directors, the complainant not being present, and Mr. Walker voting nay and protesting, passed a resolution to the effect that if Mr. Hernandez would pay the bond, he should have conveyed to him the Picayune establishment. On the following day Warmoth, through Hernandez, paid the bond and received the conveyance. The amount paid was $20,211. On the 22d of December, 1874, a special meeting of the stockholders, called by the directory, passed resolutions ratifying the action of the directors in making the conveyance to Hernandez, in payment and settlement of the twelve months' bond, and dissolving the corporation. Shortly after such dissolution, Hernandez, acting for Warmoth, sold and conveyed the entire Picayune establishment to A. M. Holbrook, for his promissory notes, amounting to $27,500, falling due

in monthly installments, the last not maturing for several years, and bearing interest at the rate of six per cent. per annum.

Two promissory notes had been given by A. M. Holbrook to Warmoth, for debts due from the Herald Company to him and for his services in connection with the paper. These notes were given at the time of the formation of the Picayune corporation, in or about, December, 1873, and had no connection with the transfer to Holbrook; and though it is evident that they were paid with more readiness by him after the action of Warmoth in making such transfer, or rather that resistance to their collection was withdrawn, they existed long before as the obligations of Holbrook, and have no bearing on the case, and may therefore be dismissed from further consideration.

The first question to be considered is, whether the conveyance of the Picayune establishment, executed under the authority of the Board of Directors and ratified by a meeting of the Stock-holders, was valid, and could and did in law, convey title to Hernandez. It is not necessary, in the view I take of this case as exhibited in the records, to do more upon this point than to see that the meeting of the stockholders was lawfully convened and regularly constituted, for since this meeting ratified the sale and transfer, and since the members or stockholders are the real principals or constituents of the corporation, if what they did was within the scope of their capacity, and was regularly done in time and

manner, it would be conclusively the action of the corporate body.

The Herald Company had given a twelve months' bond, in amount upwards of $20,000, for this very property, and then the same corporators, with the same proportionate interests, had added a new corporator, A. M. Holbrook, and changed the name of the corporation, using the purchased property as a capital. As between the bond holders and the new corporation, to the extentof the purchased property, the bond was surely enforceable against that corporation. The collateral undertaking of Holbrook, to pay the bond, did not at all affect these relations.

The debt was the debt of the New Orleans Printing Company. Indeed the bill of complaint concedes this. At paragraph twenty-three complainant says:

"For this petitioner avers and admits that in equity and good conscience, and notwithstanding the fraudulent illegal combinations and transactions of said A. M. Holbrook, Joseph Hernandez, George Nicholson, Peter St. Armand, and R. W. Holbrook, nevertheless the said New Orleans Picayune Printing Company and the holders and owners of the remaining fifty-one shares of stock thereof, owed to the said Joseph Hernandez, or his legal assigns, the amount in money which the said Joseph Hernandez paid for the discharge of the twelve months' bond aforesaid, upon which Hernandez was surety aforesaid but which was primarily the debt in equity and good conscience of the New Orleans

Picayune Printing Company, as successor of the Herald Company, which corporation was legally the principal on said bond."

The thing done, then, was for a corporation at a meeting of stockholders to sanction and ratify the application of its property to the payment of its sole debt. It has been urged by the complainant that the Board of Directors was constituted so that of five, A. M. Holbrook controlled three. But it cannot be denied that a Board of Directors who are specially designated by name in the charter of the corporation, have authority to call a meeting of the stockholders. A board of directors thus designated convened the stockholders, who acted upon this subject. At this meeting ninety-one shares were present and voted for the ratification. The stock book of the company shows that the persons so present and voting were the representatives of genuinely issued stock. So far as relates to the question of the competency of the stockholders to make the ratification, it is immaterial to inquire how much of this stock A. M. Holbrook owned, provided he actually owned it. This question may be material in another aspect of the case, which I shall consider further on, namely : What consequences in equity and law would follow after he acquired the property? But there was nothing in the fact that he owned the majority or the entirety of the stock present and voting, provided he had acquired it in the prescribed manner, and actually owned it, which would detract from the force of the vote.

If it were necessary to decide whether, and it should be decided, that, upon Holbrook's default in the payment of the bond, the sixty-five shares of the stock first received by him had in equity reverted to the corporation, and therefore should be treated as not voting, the case would stand thus: There were originally one hundred and twenty shares, only one hundred and nine of which had been issued. McComb had surrendered his four shares to the corporation; so that counting all as issued, which I think should be done, we have beside the sixty-five shares, twenty-six other shares present and voting aye. There being but one hundred and sixteen shares, there could have been only twenty-five outstanding shares, issued and unissued, which did not assent to this transfer, and the twenty-six shares assenting constituted a majority of the stock, even after excluding the sixty-five shares.

What are the powers of stockholders and a majority of stockholders, under our statute and at the common law? The revised statutes (Voorhies' ed.) 687 (Acts of 1852, p. 130, 5) provided that "it shall be lawful for the stockholders of any corporation, at a general meeting convened for that purpose, to make any modifications, additions or changes in their act of incorporation, or to dissolve it, with the assent of three-fourths of the stock represented at such meeting." Here is authority so broad that it cannot be questioned, that it includes much more than the appropriation of all the property of a corporation to pay the debt which it owed, and the

vote was not only three-fourths but all the stock represented at the meeting.

At the common law, the right of the majority to control the operations and winding up of corporations like this, not of a public character, is undoubted.

In Pratt vs. Jewett, 9 Gray, 34, a majority in number of stockholders, owning a minority of stock, petitioned for the dissolution of a manufacturing company. In their petition they averred, among other things, that "a sole owner of a majority of the stock had for many years controlled the election of officers and elected himself agent and clerk, and that he had for a long time managed the business according to his own will and choice, regardless of the wishes and interests of petitioners, that according to his statement, the corporation had been doing a losing business for years, and that he refused to make any change in the business, or to purchase the shares of the petitioners." The court answered that no sufficient reason was shown for a dissolu- of the corporation, that "Jewett, owning more than two-thirds of the stock, was entitled to the control; that the true misfortune of the petitioners seemed to be that they were in the minority, and cannot control the majority of the stock.

In Treadwell vs. Salisbury Manufacturing Company, 7 Gray, 404, the court say: "We entertain no doubt of the right of a corporation, established solely for trading and manufacturing purposes, by a vote of the majority of their stockholders, to wind up their affairs and close their business, if

they deem it expedient to do so. At common law, the right of corporations acting by a majority of their stockholders to sell their property is absolute, and is not limited as to objects, circumstances or quantity." See also authoriries cited.

Although the act of transfer was within the capacity of the members of the corporation and their sanction to it was in legal form and effective, and Hernandez took title under it, and gave (title) to A. M. Holbrook, this does not necessarily conclude the complaint, or close the door to relief in his behalf.

There remains a vital question, whether the transfer from the corporotion to Hernandez was effected in fraud of the complainant's interests or whether by his own conduct with reference to the publication of the Picayune newspaper the transfer was rendered justifiable and expedient. On behalf of the complainant it is claimed that A. M. Holbrook received sixty-five shares of the stock in consideration of his agreement to pay at maturity of the twelve months' bond, that large powers were given to him in the Board of Directors in consideration of the same agreement; that when he suffered default to be made in the payment of the bond and permitted the publishing establishment to be applied to its satisfaction, he violated a quasi trust; and that upon his purchase of the establishment he must be treated as holding it in trust for the complainant to the extent of his former proportionate interest. On behalf of the respondents, it is claimed that all of the stock, except that held by

the complainant, has for a long time been owned by them; that the reason of the sale to Hernandez was not any wish or purpose to defraud the complainant, or any of the stockholders, but that the cause which necessitated it, was the incurable dissensions between Walker, A. M. Holbrook and the complainant, and the continued refusal on the part of complainant to comply with the charter and by-laws made in pursuance thereof, so far as related to the conduct of the paper, and that in consequence of this dissension, on the part of those in interest and the defection of the complainant, the paper became so crippled financially that it was impossible for A. M. Holbrook to pay the bond at maturity, and the only wise disposition that could be made of the paper, in the interest of all the corporators was to apply its entire establishment to the payment of its sole debt.

As furnishing aid in solving this question, it is important to determine whether the sale to Hernandez was made in order to enable a disrupted corporation to dispose justly of its assets in payment of its debt, or whether it was a step in a fraudulent scheme to convey the property through Hernandez to Holbrook. The action of Warmoth would fairly indicate the controlling purpose of the movers, as his liability to indemnify Hernandez for his becoming security on the $20,000 bond must have led him and his intimate relations with both Holbrook and Hernandez, must have enabled him to know thoroughly the transaction from beginning

to end. His action in this matter stands for that of Holbrook.

He (Warmoth) testifies on this subject, that, after learning of Holbrook's inability to pay the bond, he informed Alexander Walker, who, it must be remembered, stated in his protest against the conveyance to Hernandez that he represented the entire non-assenting stock, including all of complainant's, "that if he or any of his friends would pay the bond, they should have the property, namely, the Picayune establishment. At one time, he said he would pay the bond and take the property, which he never did." This is confirmed by the testimony of Walker.

If Holbrook had proposed to defraud and to acquire title by having the bond enforced, would he have gone to those whom he is charged with compassing to defraud and offered the coveted title upon payment of the bond? It would be extremely difficult to reconcile this offer with any conspiracy to defraud the complainant or Walker, or with any scheme to secure the property for Holbrook or with any other purpose, save that of judiciously closing up an enterprise which from incurable discord, had to be abandoned as a failure. Holbrook's purchase of the additional stock is reconciliable with the same purpose, stimulated by a desire, by payment of Hernandez's bond, through the assets of the company, to relieve himself from a loss which he felt the fault of others, including complainant, would more justly place upon them than him. The charter placed the control of the whole business in the hands of the Directors and

they, by their by-laws, gave the editorial and business management into the hands of A. M. Holbrook, the President. Though this may have been distasteful to the complainant, since done in accordance with the supreme and organic law of a corporation, it constitutes no good ground of his withdrawal of his aid and co-operation from the joint enterprise.

There could be no prior understanding between members of a corporation which could prevent the supremacy of its character as constituting the rule for its operations, and the law for its members.

Still the complainant seems to have been so impressed with the idea that the adoption of the by-laws of December 26th, 1873, which gave the supervision over the editors to the President, was a violation of the understanding with which he had entered into the corporation, that he states in his testimony that "he felt from that time that he could not attend any meeting of the Board of Directors, or assume any connection with the Picayune without condoning a fraud and jeopardizing his own interest and those of other stockholders of the paper. He stood ready to resume his post as managing editor and never refused to perform any duty in that line. "The fact of this position of resistance to the by-laws upon the part of the complainant, is stated by nearly all witnesses who testify on the subject.

Alexander Walker says, "Mr. Hancock never attended any meetings of Directors but one or two, and he retired from the Board and retired from the establishment, and I new saw him or held any consultation with him during the year following."

He says also, "We of the Herald Company had been exceedingly dissatisfied with the assumption of the entire control of the establishment by Mr. Holbrook."

St. Amand, though on the cross-examination, he seems to have derived much of his information from Holbrook, expresses the opinion that the paper became a source of loss in its publication, and that it became such in consequence of want of cordial assistance from the complainant and Walker.

Warmoth, who was a friend of the complainant, of A. M. Holbrook and of Walker, who had the fullest opportunity of knowing of their relations and conduct in connection with the newspaper itself, says, that about the time the twelve months' bond was falling due, Holbrook informed him he could not pay it. He further testifies "he (Holbrook) and Hancock and Walker, who were by agreement to be editors and managers of the Picayune newspaper, under the control of Holbrook, had disagreed. Each wanted to have the whole control of the editorial department. In consequence of this Hancock did not give the aid that was expected, nor the countenance and assistance which was so necessary to the success of the paper. He was an able and influential newspaper man, and his defection was a serious drawback to success and the enterprise eventuated in a failure."

Upon crosss-examination he gives the language which each of those gentlemen used with reference to the other. It is evident such total distrust and such bitter personal feeling that successful joint action on their part in any business was beyond reasonable expectation.

Concert of action between partners and confidence in each other, would be essential in any business, but absolutely necessary in the business of conducting and publishing a daily newspaper, in which such practical sagacity and untiring vigilance are demanded, in which one day of inaction or illadvised action in consequence of dissention on the part of managers might entail irreparable pecuniary loss upon proprietors. The testimony of Warmoth, thus corroborated, establishes the continued dissension on the part of these three leading newspaper men, the withdrawal of the complainant, and the damaging effect of this upon the interests and prospects of the newspaper. The testimony as to the value of the Picayune establishment is to be considered with reference to these facts. The witnesses vary in their estimates, ranging from $5,000 to $100,000. But it is clear that unless the internal obstacles could be removed the paper could have had but little value beyond the type and material. A year previous it had been sold for $20,000 on twelve months credit. Fourteen months afterwards it was appraised in the succession of A. M. Holbrook at $30,000. At the time of the sale to Hernandez, it was offered by Warmoth to those in interest for the amount of the bond, less than $21,000 and no purchaser could be found. Warmoth testified that he regarded the long notes of Holbrook for $27,500 as worth scarcely more than 25 per cent. of their face. The estimate of witnesses cannot outweigh these facts, and the question before the court is as to the wisdom of the sale with reference to a corporation situated in its internal relations precisely as this was; that is, rent and

paralyzed by serious and unabating animosities and differences on the part of those who were its Directors and sources of chief energy.

Under the circumstances, the sale on the part of the stockholders was justifiable and judicious. It would have been utter ruin to have continued the publication of a paper so situated—ruin for all concerned. The language of the Supreme Court of Massachusetts in Treadwell vs. Salisbury Manufacturing Company, 7 Gray, 393, may with propriety be adopted as decisive of this question. The court say: "Upon the facts found in the case before us, we see no reason to doubt that the vote of the majority of the stockholders for the sale of the corporate property and the closing of the business of the corporation was justified by the condition of their affairs."

Without available capital and without the means of procuring it, the further prosecution of their business would be unprofitable if not impracticable."

But it is urged by the solicitor of the complainant that Holbrook was acting as and with the responsibilty of a trustee, and when he purchased the property he held it in trust for the complainant to the extent of his former proportionate interest in the corporation. Holbrook had undertaken to pay the twelve month's bond, and he failed to perform his undertaking. True, he did fail in carrying out that undertaking and the property of the corporatson was applied to pay the debt, which, as between it and Holbrook, belonged to him to pay. But it is established that Holbrook's inability to pay the bond, and the inability of the corporation to prosecute profitably

its corporate business, resulted largely from the continued refusal on the part of the complainant to acquiesce in the charter, and from discordant views and action in which complainant largely participated. In consequence of this, an enterprise which the testimony shows might have been advantageous both to complainant and Holbrook, was rendered a failure and Holbrook, who had received nothing but sixty-five shares of stock, allowed that to pass, with that of other holders, to Hernandez, in payment of a debt which existed prior to his acquisition of the stock. The business of the corporation had become a failure, and the court finds that the defection and withdrawal of the complainant from this business, which he was bound to aid and assist, was to a large extent the cause of the failure.

Under these circumstances, the complainant can not urge as a cause of action in a court of equity, that Holbrook restored to the corporation all he he has received, placed it, so far as possible, in statu quo, and did not prevent the application of its property to the extinction of an oblgation which had existed before he had any connection with it.

The complainant has failed to establish his cause, and the decree must be that the bill be dismissed.

See Hancock vs. Holbrook, 4 Wood, Rept 52.

ARGUMENT.

Plaintiff claims that Holbrook was a trustee, but the facts of the case show that he was not such in the eye of the law.

Trusts are either express or implied. With express trusts we have nothing to do—and we must consider whether the case stated created a result-

ing trust, which are declared to be those which result in law from the acts of the parties, whether they intended to create a trust or not, and they are aptly designated resulting trusts. Perry on Trusts, § 124.

1st. When the purchaser of an estate pays the purchase money and takes the title in the name of a third person:

2d. Where a person standing in a fiduciary relation, uses fiduciary funds to purchase property, and takes the title in his own name:

3d. Where an estate is conveyed upon trusts, which are, or are not declared or are illegal:

4th. Where the legal title to property is conveyed, and there is no reason to infer that it was the intention to convey the beneficial interest, and

5th. Where voluntary conveyances are made, or conveyances without consideration; none of these apply to the present case, and there is no case for the plaintiff unless he can show fraud on the part of A. M. Holbrook, a fraud that worked an injury to plaintiff who himself did no wrong.

This enumeration includes all the cases, which are ordinarily recognized as giving rights to resulting trusts, it is possible that courts, would recognize other classes of cases as creating such trusts, but, they would be cases included within the principles that one person had come into the possession of property as to which he was or came under some obligation to another person by such possession, the test as applied to this case would be, did Holbrook owe any obligation to Hancock when the corporation made default in the payment of the twelve months' bond? It is submitted that

this question must be answered by the further question. What was the cause of the default? If as the case shows, it was owing chiefly or largely, if not entirely to the failure of the complainant, Hancock, to perform his part of the undertaking with reference to the publication of the paper, then he could have maintained no action against Holbrook, and Holbrook owed him no obligation for the non-payment of the bond and the extinction of the corporation, Holbrook owing them no obligation, by the subsequent purchase of the property, cannot be held to have entered upon a trust, for equity would create none.

There was no fraud in the inception of the arrangement by which Holbrook became the owner of the Picayune Printing Establishment, all the parties acted in good faith with expectation of gain, the terms of the contract were plain, no misrepsentation was made by Holbrook, in consideration of the transfer of sixty-five shares of the stock of Herald Company to him; there was no misrepsentation when, he assumed the twelve months bond, there was no misrepresentation when he conveyed the Picayune Establishment to the New Orleans Printing Company for the stated price of $30,000 cash, which he did not receive, and which the other incorporators well knew he did not receive, there was no misrepresentation when the other incorporators received their stock as full paid, when they paid nothing for it. There was no misrepresentation of facts, when the holder of the twelve months' bond demanded payment of it, it is not pretended that it was paid or provided for, when it fell due;

there was no misrepresentation in the action of the Board of Directors in conveying the Picayune Establishment to the surety on the twelve months' bond, which was done publicly, to the knowledge of Hancock and Walker; there was no misrepresentation in the action of the stockholders, in ratifying the sale of the property to Hernandez in payment of the bond, and there could be no misrepresentation when the property was offered to Walker and the Herald people, by Warmoth and Hernandez before he sold to Holbrook.

Where then did the fraud commence? If it did not exist during the continuance of the relations of of the parties, it could not come into existence afterwards, after the disruption of the business relations that were originally between the parties. And we suggest that the complainant could not stand by, for years, and let Holbrook make a success, and then claim the benefit of his labors and his skill, without giving a helping hand, according to the original intentions of the parties to make the enterprise a success from their individual and united labors, skill and reputation as journalists.

ROBERT MOTT,

of Counsel.

112-229

No. 377.

SUPREME COURT OF THE UNITED STATES.

EDWARD C. HANCOCK, APPELLANT.

versus

MRS. ELIZA JANE HOLBROOK, now
MRS. ELIZA JANE NICHOLSON,
GEORGE NICHOLSON, AND CHARLES T. HOWARD,
APPELLEES.

ADDITIONAL BRIEF OF APPELLEES.

ROBERT MOTT,
Att'y for Appellees.

No. 377.

SUPREME COURT OF THE UNITED STATES.

EDWARD C. HANCOCK, APPELLANT.

versus

MRS. ELIZA JANE HOLBROOK, now
MRS. ELIZA JANE NICHOLSON,
GEORGE NICHOLSON, AND CHARLES T. HOWARD,
APPELLEES.

ADDITIONAL BRIEF OF APPELLEES.

The action of the Board of Directors of the Picayune Printing Company in selling the Newspaper establishment to Hernandez in payment of the twelve months bond, was lawful and within the scope of their powers; such being the case, the Court will not examine into the affairs of the corporation to determine the expediency of its action, or the motives for it, when the action itself is lawful and *intra vires*. Bailey vs Berkenhead, L. & C. I. R. Co. 12 Beaver, 433.

It is nowhere alleged, nor is it true, that the action of the Board of Directors was in excess of the powers of the directors; as to the wisdom of the sale, or the necessity for it at the time, or the motives which prompted it, the Courts will not inquire,